



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2013 REGULAR SESSION

HOUSE BILL NO. 167

AS ENACTED

TUESDAY, MARCH 12, 2013

RECEIVED AND FILED
DATE March 19, 2013
7:27pm

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Adler

1 AN ACT relating to defense and security of the homeland and declaring an
2 emergency.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 39G IS CREATED TO
5 READ AS FOLLOWS:

6 (1) The Kentucky Intelligence Fusion Center is created within the Kentucky Office of
7 Homeland Security to improve intelligence sharing among public safety and
8 public service agencies at the federal, state, and local levels, as well as the private
9 sector.

10 (2) The Kentucky Intelligence Fusion Center shall be a collaboration between the
11 Kentucky Office of Homeland Security and federal, state, and local agencies, as
12 well as the private sector, including but not limited to those with the primary
13 purpose of law enforcement, public safety, public protection, infrastructure
14 protection, public transit, and corrections.

15 ➔Section 2. KRS 39G.010 is amended to read as follows:

16 (1) The Kentucky Office of Homeland Security shall be attached to the Office of the
17 Governor and shall be headed by an executive director appointed by the Governor.

18 (2) The executive director shall:

19 (a) Publicize the findings of the General Assembly stressing the dependence on
20 Almighty God as being vital to the security of the Commonwealth by
21 including the provisions of KRS 39A.285(3) in its agency training and
22 educational materials. The executive director shall also be responsible for
23 prominently displaying a permanent plaque at the entrance to the state's
24 Emergency Operations Center stating the text of KRS 39A.285(3);

25 (b) Establish and chair an interagency working group composed of the chair of the
26 Senate Veterans, Military Affairs, and Public Protection Committee, the chair
27 of the House of Representatives Seniors, Military Affairs, and Public Safety

1 Committee, state agency representation, and private agency representation.
2 The working group shall have the purpose of identifying risks and needs and
3 making a complete assessment of the preparedness of the Commonwealth to
4 respond to acts of war or terrorism, including nuclear, biological, chemical,
5 electromagnetic pulse, agro-, eco-, or cyber-terrorism;

6 (c) Serve as the State Appointed Administrator for the United States Department
7 of Homeland Security;

8 (d) Implement all homeland security presidential and gubernatorial directives,
9 including directives pertaining to state and local compliance with the National
10 Incident Management System;

11 (e) Coordinate the efforts of the Kentucky Office of Homeland Security with the
12 efforts of the federal Department of Homeland Security;

13 (f) Accept and allocate any homeland security funds in compliance with
14 applicable federal and state laws and administrative regulations; and

15 (g) Inform the members of the General Assembly of the process by which a public
16 agency applies for a federal homeland security grant and shall provide the
17 following information to the members at least ninety (90) days before an
18 application deadline:

- 19 1. The application deadline;
- 20 2. How a public agency can obtain an application form;
- 21 3. How a public agency can obtain assistance in filling out an application
22 form; and
- 23 4. Any other information that would be helpful to a public agency
24 interested in applying for a federal homeland security grant.

25 (3) The executive director may delegate responsibilities created under this section to
26 another executive branch agency.

27 (4) The Kentucky Office of Homeland Security shall:

1 (a) Develop and publish a comprehensive statewide homeland security strategy
 2 that coordinates state and local efforts to detect, deter, mitigate, and respond
 3 to a terrorist incident;

4 (b) Develop a comprehensive strategy addressing how state and federal funds and
 5 other assistance will be allocated within the state to purchase specialized
 6 equipment required to prevent and respond effectively and safely to terrorist
 7 incidents;

8 (c) Urge the state and local governments to exceed minimum federal
 9 requirements for receiving assistance in preparing to respond to acts of war or
 10 terrorism in the hope that the Commonwealth will become a national leader in
 11 this preparation;

12 (d) Provide information explaining how individuals and private organizations,
 13 including volunteer and religious organizations, can best prepare for and
 14 respond to incidents contemplated by this section and to other threatened,
 15 impending, or declared emergencies and whom to contact should they desire
 16 to volunteer help or services during such an emergency. The program shall
 17 identify and encourage these private organizations to specifically commit to
 18 provide food, shelter, personnel, equipment, materials, consultation, and
 19 advice, or other services needed to respond to these incidents;

20 (e) Administer the Kentucky Intelligence Fusion Center and coordinate its
 21 operations with other federal, state, and local agencies; and

22 ~~(f)(e)~~ Promulgate any administrative regulations necessary to carry out the
 23 provisions of this chapter.

24 (5) The adjutant general, or his or her designee, shall concurrently notify the Governor
 25 and the executive director of the Office of Homeland Security of a disaster or
 26 emergency involving homeland security. The adjutant general, or his or her
 27 designee, shall be the Governor's primary point of contact for managing and

1 responding to a disaster or emergency involving homeland security.

2 ➔Section 3. KRS 61.878 is amended to read as follows:

3 (1) The following public records are excluded from the application of KRS 61.870 to
4 61.884 and shall be subject to inspection only upon order of a court of competent
5 jurisdiction, except that no court shall authorize the inspection by any party of any
6 materials pertaining to civil litigation beyond that which is provided by the Rules of
7 Civil Procedure governing pretrial discovery:

8 (a) Public records containing information of a personal nature where the public
9 disclosure thereof would constitute a clearly unwarranted invasion of personal
10 privacy;

11 (b) Records confidentially disclosed to an agency and compiled and maintained
12 for scientific research. This exemption shall not, however, apply to records the
13 disclosure or publication of which is directed by another statute;

14 (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an
15 agency or required by an agency to be disclosed to it, generally
16 recognized as confidential or proprietary, which if openly disclosed
17 would permit an unfair commercial advantage to competitors of the
18 entity that disclosed the records;

19 2. Upon and after July 15, 1992, records confidentially disclosed to an
20 agency or required by an agency to be disclosed to it, generally
21 recognized as confidential or proprietary, which are compiled and
22 maintained:

23 a. In conjunction with an application for or the administration of a
24 loan or grant;

25 b. In conjunction with an application for or the administration of
26 assessments, incentives, inducements, and tax credits as described
27 in KRS Chapter 154;

1 c. In conjunction with the regulation of commercial enterprise,
2 including mineral exploration records, unpatented, secret
3 commercially valuable plans, appliances, formulae, or processes,
4 which are used for the making, preparing, compounding, treating,
5 or processing of articles or materials which are trade commodities
6 obtained from a person; or

7 d. For the grant or review of a license to do business.

8 3. The exemptions provided for in subparagraphs 1. and 2. of this
9 paragraph shall not apply to records the disclosure or publication of
10 which is directed by another statute;

11 (d) Public records pertaining to a prospective location of a business or industry
12 where no previous public disclosure has been made of the business' or
13 industry's interest in locating in, relocating within or expanding within the
14 Commonwealth. This exemption shall not include those records pertaining to
15 application to agencies for permits or licenses necessary to do business or to
16 expand business operations within the state, except as provided in paragraph
17 (c) of this subsection;

18 (e) Public records which are developed by an agency in conjunction with the
19 regulation or supervision of financial institutions, including but not limited to,
20 banks, savings and loan associations, and credit unions, which disclose the
21 agency's internal examining or audit criteria and related analytical methods;

22 (f) The contents of real estate appraisals, engineering or feasibility estimates and
23 evaluations made by or for a public agency relative to acquisition of property,
24 until such time as all of the property has been acquired. The law of eminent
25 domain shall not be affected by this provision;

26 (g) Test questions, scoring keys, and other examination data used to administer a
27 licensing examination, examination for employment, or academic examination

1 before the exam is given or if it is to be given again;

2 (h) Records of law enforcement agencies or agencies involved in administrative
3 adjudication that were compiled in the process of detecting and investigating
4 statutory or regulatory violations if the disclosure of the information would
5 harm the agency by revealing the identity of informants not otherwise known
6 or by premature release of information to be used in a prospective law
7 enforcement action or administrative adjudication. Unless exempted by other
8 provisions of KRS 61.870 to 61.884, public records exempted under this
9 provision shall be open after enforcement action is completed or a decision is
10 made to take no action; however, records or information compiled and
11 maintained by county attorneys or Commonwealth's attorneys pertaining to
12 criminal investigations or criminal litigation shall be exempted from the
13 provisions of KRS 61.870 to 61.884 and shall remain exempted after
14 enforcement action, including litigation, is completed or a decision is made to
15 take no action. The exemptions provided by this subsection shall not be used
16 by the custodian of the records to delay or impede the exercise of rights
17 granted by KRS 61.870 to 61.884;

18 (i) Preliminary drafts, notes, correspondence with private individuals, other than
19 correspondence which is intended to give notice of final action of a public
20 agency;

21 (j) Preliminary recommendations, and preliminary memoranda in which opinions
22 are expressed or policies formulated or recommended;

23 (k) All public records or information the disclosure of which is prohibited by
24 federal law or regulation;

25 (l) Public records or information the disclosure of which is prohibited or
26 restricted or otherwise made confidential by enactment of the General
27 Assembly;

1 (m) 1. Public records the disclosure of which would have a reasonable
2 likelihood of threatening the public safety by exposing a vulnerability in
3 preventing, protecting against, mitigating, or responding to a terrorist act
4 and limited to:

- 5 a. Criticality lists resulting from consequence assessments;
- 6 b. Vulnerability assessments;
- 7 c. Antiterrorism protective measures and plans;
- 8 d. Counterterrorism measures and plans;
- 9 e. Security and response needs assessments;
- 10 f. Infrastructure records that expose a vulnerability referred to in this
11 subparagraph through the disclosure of the location, configuration,
12 or security of critical systems, including public utility critical
13 systems. These critical systems shall include but not be limited to
14 information technology, communication, electrical, fire
15 suppression, ventilation, water, wastewater, sewage, and gas
16 systems;
- 17 g. The following records when their disclosure will expose a
18 vulnerability referred to in this subparagraph: detailed drawings,
19 schematics, maps, or specifications of structural elements, floor
20 plans, and operating, utility, or security systems of any building or
21 facility owned, occupied, leased, or maintained by a public agency;
22 and
- 23 h. Records when their disclosure will expose a vulnerability referred
24 to in this subparagraph and that describe the exact physical
25 location of hazardous chemical, radiological, or biological
26 materials.

27 2. As used in this paragraph, "terrorist act" means a criminal act intended

1 to:

2 a. Intimidate or coerce a public agency or all or part of the civilian
3 population;

4 b. Disrupt a system identified in subparagraph 1.f. of this paragraph;
5 or

6 c. Cause massive destruction to a building or facility owned,
7 occupied, leased, or maintained by a public agency.

8 3. On the same day that a public agency denies a request to inspect a public
9 record for a reason identified in this paragraph, that public agency shall
10 forward a copy of the written denial of the request, referred to in KRS
11 61.880(1), to the executive director of the Kentucky Office of
12 Homeland~~[for]~~ Security ~~[Coordination]~~ and the Attorney General.

13 4. Nothing in this paragraph shall affect the obligations of a public agency
14 with respect to disclosure and availability of public records under state
15 environmental, health, and safety programs.

16 5. The exemption established in this paragraph shall not apply when a
17 member of the Kentucky General Assembly seeks to inspect a public
18 record identified in this paragraph under the Open Records Law; and

19 (n) Public or private records, including books, papers, maps, photographs, cards,
20 tapes, discs, diskettes, recordings, software, or other documentation regardless
21 of physical form or characteristics, having historic, literary, artistic, or
22 commemorative value accepted by the archivist of a public university,
23 museum, or government depository from a donor or depositor other than a
24 public agency. This exemption shall apply to the extent that nondisclosure is
25 requested in writing by the donor or depositor of such records, but shall not
26 apply to records the disclosure or publication of which is mandated by another
27 statute or by federal law.

1 (2) No exemption in this section shall be construed to prohibit disclosure of statistical
2 information not descriptive of any readily identifiable person.

3 (3) No exemption in this section shall be construed to deny, abridge, or impede the
4 right of a public agency employee, including university employees, an applicant for
5 employment, or an eligible on a register to inspect and to copy any record including
6 preliminary and other supporting documentation that relates to him. The records
7 shall include, but not be limited to, work plans, job performance, demotions,
8 evaluations, promotions, compensation, classification, reallocation, transfers, lay-
9 offs, disciplinary actions, examination scores, and preliminary and other supporting
10 documentation. A public agency employee, including university employees,
11 applicant, or eligible shall not have the right to inspect or to copy any examination
12 or any documents relating to ongoing criminal or administrative investigations by
13 an agency.

14 (4) If any public record contains material which is not excepted under this section, the
15 public agency shall separate the excepted and make the nonexcepted material
16 available for examination.

17 (5) The provisions of this section shall in no way prohibit or limit the exchange of
18 public records or the sharing of information between public agencies when the
19 exchange is serving a legitimate governmental need or is necessary in the
20 performance of a legitimate government function.

21 ➔Section 4. The General Assembly hereby confirms Executive Order 2012-418,
22 dated June 18, 2012, relating to the creation of the Kentucky Intelligence Fusion Center,
23 to the extent it is not otherwise confirmed by this Act, this executive order having been
24 made by the Governor under the powers and authorities granted to the Governor by
25 Sections 69 and 81 of the Constitution of Kentucky and KRS 12.028.

26 ➔Section 5. KRS 237.110 is amended to read as follows:

27 (1) The Department of Kentucky State Police is authorized to issue and renew licenses

1 to carry concealed firearms or other deadly weapons, or a combination thereof, to
2 persons qualified as provided in this section.

3 (2) An original or renewal license issued pursuant to this section shall:

4 (a) Be valid throughout the Commonwealth and, except as provided in this
5 section or other specific section of the Kentucky Revised Statutes or federal
6 law, permit the holder of the license to carry firearms, ammunition, or other
7 deadly weapons, or a combination thereof, at any location in the
8 Commonwealth;

9 (b) Unless revoked as provided by law, be valid for a period of five (5) years from
10 the date of issuance;

11 (c) Authorize the holder of the license to carry a concealed firearm or other
12 deadly weapon, or a combination thereof, on or about his or her person; and

13 (d) Authorize the holder of the license to carry ammunition for a firearm on or
14 about his or her person.

15 (3) Prior to the issuance of an original or renewal license to carry a concealed deadly
16 weapon, the Department of Kentucky State Police shall conduct a background check
17 to ascertain whether the applicant is eligible under 18 U.S.C. sec. 922(g) and (n),
18 any other applicable federal law, and state law to purchase, receive, or possess a
19 firearm or ammunition, or both. The background check shall include:

20 (a) A state records check covering the items specified in this subsection, together
21 with any other requirements of this section;

22 (b) A federal records check, which shall include a National Instant Criminal
23 Background Check System (NICS) check;

24 (c) A federal Immigration Alien Query if the person is an alien who has been
25 lawfully admitted to the United States by the United States government or an
26 agency thereof; and

27 (d) In addition to the Immigration Alien Query, if the applicant has not been

1 lawfully admitted to the United States under permanent resident status, the
2 Department of Kentucky State Police shall, if a doubt exists relating to an
3 alien's eligibility to purchase a firearm, consult with the United States
4 Department of Homeland Security, United States Department of Justice,
5 United States Department of State, or other federal agency to confirm whether
6 the alien is eligible to purchase a firearm in the United States, bring a firearm
7 into the United States, or possess a firearm in the United States under federal
8 law.

9 (4) The Department of Kentucky State Police shall issue an original or renewal license
10 if the applicant:

11 (a) Is not prohibited from the purchase, receipt, or possession of firearms,
12 ammunition, or both pursuant to 18 U.S.C. 922(g), 18 U.S.C. 922(n), or
13 applicable federal or state law;

14 (b) 1. Is a citizen of the United States who is a resident of this Commonwealth
15 and has been a resident for six (6) months or longer immediately
16 preceding the filing of the application;

17 2. Is a citizen of the United States who is a member of the Armed Forces of
18 the United States who is on active duty, who is at the time of application
19 assigned to a military posting in Kentucky, and who has been assigned
20 to a posting in the Commonwealth for six (6) months or longer
21 immediately preceding the filing of the application;

22 3. Is lawfully admitted to the United States by the United States
23 government or an agency thereof, is permitted by federal law to purchase
24 a firearm, and has been a resident of this Commonwealth for six (6)
25 months or longer immediately preceding the filing of the application; or

26 4. Is lawfully admitted to the United States by the United States
27 government or an agency thereof, is permitted by federal law to purchase

1 a firearm, is, at the time of the application, assigned to a military posting
2 in Kentucky, and has been assigned to a posting in the Commonwealth
3 for six (6) months or longer immediately preceding the filing of the
4 application;

5 (c) Is twenty-one (21) years of age or older;

6 (d) Has not been committed to a state or federal facility for the abuse of a
7 controlled substance or been convicted of a misdemeanor violation of KRS
8 Chapter 218A or similar laws of any other state relating to controlled
9 substances, within a three (3) year period immediately preceding the date on
10 which the application is submitted;

11 (e) Does not chronically and habitually use alcoholic beverages as evidenced by
12 the applicant having two (2) or more convictions for violating KRS 189A.010
13 within the three (3) years immediately preceding the date on which the
14 application is submitted, or having been committed as an alcoholic pursuant to
15 KRS Chapter 222 or similar laws of another state within the three (3) year
16 period immediately preceding the date on which the application is submitted;

17 (f) Does not owe a child support arrearage which equals or exceeds the
18 cumulative amount which would be owed after one (1) year of nonpayment, if
19 the Department of Kentucky State Police has been notified of the arrearage by
20 the Cabinet for Health and Family Services;

21 (g) Has complied with any subpoena or warrant relating to child support or
22 paternity proceedings. If the Department of Kentucky State Police has not
23 been notified by the Cabinet for Health and Family Services that the applicant
24 has failed to meet this requirement, the Department of Kentucky State Police
25 shall assume that paternity and child support proceedings are not an issue;

26 (h) Has not been convicted of a violation of KRS 508.030 or 508.080 within the
27 three (3) years immediately preceding the date on which the application is

submitted. The commissioner of the Department of Kentucky State Police may waive this requirement upon good cause shown and a determination that the applicant is not a danger and that a waiver would not violate federal law; and

(i) Demonstrates competence with a firearm by successful completion of a firearms safety course offered or approved by the Department of Criminal Justice Training. The firearms safety course shall:

1. Be not more than eight (8) hours in length;
2. Include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, and handgun marksmanship principles;
3. Include actual range firing of a handgun in a safe manner, and the firing of not more than twenty (20) rounds at a full-size silhouette target, during which firing, not less than eleven (11) rounds must hit the silhouette portion of the target; and
4. Include information on and a copy of laws relating to possession and carrying of firearms, as set forth in KRS Chapters 237 and 527, and the laws relating to the use of force, as set forth in KRS Chapter 503.

(5) (a) A legible photocopy of the certificate of completion issued by the Department of Criminal Justice Training shall constitute evidence of qualification under subsection (4)(i) of this section.

(b) Persons qualifying under subsection (6)(c) of this section may submit with their application at least one (1) of the following forms or their successor forms showing evidence of handgun training or handgun qualifications:

1. Department of Defense Form DD 2586;
2. Department of Defense Form DD 214;
3. Coast Guard Form CG 3029;
4. Department of the Army Form DA 88-R;

1 5. Department of the Army Form DA 5704-R;

2 6. Department of the Navy Form OPNAV 3591-1; or

3 7. Department of the Air Force Form AF 522.

4 (6) (a) Peace officers who are currently certified as peace officers by the Kentucky
5 Law Enforcement Council pursuant to KRS 15.380 to 15.404 and peace
6 officers who are retired and are members of the Kentucky Employees
7 Retirement System, State Police Retirement System, or County Employees
8 Retirement System or other retirement system operated by or for a city,
9 county, or urban-county in Kentucky shall be deemed to have met the training
10 requirement.

11 (b) Current and retired peace officers of the following federal agencies shall be
12 deemed to have met the training requirement:

13 1. Any peace officer employed by a federal agency specified in KRS
14 61.365;

15 2. Any peace officer employed by a federal civilian law enforcement
16 agency not specified above who has successfully completed the basic
17 law enforcement training course required by that agency;

18 3. Any military peace officer of the United States Army, Navy, Marine
19 Corps, or Air Force, or a reserve component thereof, or of the Army
20 National Guard~~[Reserve]~~ or Air ~~[Force-]~~National Guard~~[Reserve-]~~ who
21 has successfully completed the military law enforcement training course
22 required by that branch of the military; and

23 4. Any member of the United States Coast Guard serving in a peace officer
24 role who has successfully completed the law enforcement training
25 course specified by the United States Coast Guard.

26 (c) Active or discharged service members in the United States Army, Navy,
27 Marine Corps, Air Force, or Coast Guard, or a reserve component thereof,

or of the Army National Guard or Air National Guard shall be deemed to have met the training requirement if these persons:

1. Successfully completed handgun training of not less than four (4) hours, which was conducted by the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, or a reserve component thereof, or of the Army National Guard or Air National Guard; or

2. Successfully completed handgun qualification within the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, or a reserve component thereof, or of the Army Guard or Air Force National Guard.

- (7) The application for a license, or renewal of a license, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. Persons qualifying under subsection (6)(c) of this section shall be supplied the information in subsection (4)(i)(4) of this section upon obtaining an application. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars (\$60) shall be presented to the office of the sheriff of the county in which the applicant resides. A full-time or part-time peace officer who is currently certified as a peace officer by the Kentucky Law Enforcement Council who is authorized by his or her employer or government authority to carry a concealed deadly weapon at all times and all locations within the Commonwealth pursuant to KRS 527.020 or a retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be exempt from paying the application or renewal fees. The sheriff shall transmit the application and accompanying material to the Department of Kentucky State Police within five (5) working days. Twenty dollars (\$20) of the application

1 fee shall be retained by the office of the sheriff for official expenses of the office.
2 Twenty dollars (\$20) shall be sent to the Department of Kentucky State Police with
3 the application. Ten dollars (\$10) shall be transmitted by the sheriff to the
4 Administrative Office of the Courts to fund background checks for youth leaders,
5 and ten dollars (\$10) shall be transmitted to the Administrative Office of the Courts
6 to fund background checks for applicants for concealed weapons. The application
7 shall be completed, under oath, on a form promulgated by the Department of
8 Kentucky State Police by administrative regulation which shall only include:

- 9 (a) 1. The name, address, place and date of birth, citizenship, gender, Social
10 Security number of the applicant; and
11 2. If not a citizen of the United States, alien registration number if
12 applicable, passport number, visa number, mother's maiden name, and
13 other information necessary to determine the immigration status and
14 eligibility to purchase a firearm under federal law of a person who is not
15 a citizen of the United States;
16 (b) A statement that, to the best of his or her knowledge, the applicant is in
17 compliance with criteria contained within subsections (3) and (4) of this
18 section;
19 (c) A statement that the applicant has been furnished a copy of this section and is
20 knowledgeable about its provisions;
21 (d) A statement that the applicant has been furnished a copy of, has read, and
22 understands KRS Chapter 503 as it pertains to the use of deadly force for self-
23 defense in Kentucky; and
24 (e) A conspicuous warning that the application is executed under oath and that a
25 materially false answer to any question, or the submission of any materially
26 false document by the applicant, subjects the applicant to criminal prosecution
27 under KRS 523.030.

1 (8) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the
2 applicant's county of residence:

3 (a) A completed application as described in subsection (7) of this section;

4 (b) A recent color photograph of the applicant, as prescribed by administrative
5 regulation;

6 (c) A photocopy of a certificate or an affidavit or document as described in
7 subsection (5) of this section; and

8 (d) For an applicant who is not a citizen of the United States and has been
9 lawfully admitted to the United States by the United States government or an
10 agency thereof, his or her United States government issued:

11 1. Permanent Resident Card I-551 or its equivalent successor
12 identification;

13 2. Other United States government issued evidence of lawful admission to
14 the United States which includes the category of admission, if admission
15 has not been granted as a permanent resident; and

16 3. Evidence of compliance with the provisions of 18 U.S.C. sec. 922(g)(5),
17 18 U.S.C. sec. 922(d)(5), or 18 U.S.C. sec. 922(y)(2), and 27 C.F.R. Part
18 178, including, as appropriate, but not limited to evidence of ninety (90)
19 day residence in the Commonwealth, a valid current Kentucky hunting
20 license if claiming exemption as a hunter, or other evidence of eligibility
21 to purchase a firearm by an alien which is required by federal law or
22 regulation.

23 If an applicant presents identification specified in this paragraph, the sheriff
24 shall examine the identification, may record information from the
25 identification presented, and shall return the identification to the applicant.

26 (9) The Department of Kentucky State Police shall, within ninety (90) days after the
27 date of receipt of the items listed in subsection (8) of this section, either:

1 (a) Issue the license; or

2 (b) Deny the application based solely on the grounds that the applicant fails to
3 qualify under the criteria listed in subsection (3) or (4) of this section. If the
4 Department of Kentucky State Police denies the application, it shall notify the
5 applicant in writing, stating the grounds for denial and informing the applicant
6 of a right to submit, within thirty (30) days, any additional documentation
7 relating to the grounds of denial. Upon receiving any additional
8 documentation, the Department of Kentucky State Police shall reconsider its
9 decision and inform the applicant within twenty (20) days of the result of the
10 reconsideration. The applicant shall further be informed of the right to seek de
11 novo review of the denial in the District Court of his or her place of residence
12 within ninety (90) days from the date of the letter advising the applicant of the
13 denial.

14 (10) The Department of Kentucky State Police shall maintain an automated listing of
15 license holders and pertinent information, and this information shall be available
16 on-line, upon request, at all times to all Kentucky, federal, and other states' law
17 enforcement agencies. A request for the entire list of licensees, or for all licensees in
18 a geographic area, shall be denied. Only requests relating to a named licensee shall
19 be honored or available on-line. Information on applications for licenses, names and
20 addresses, or other identifying information relating to license holders shall be
21 confidential and shall not be made available except to law enforcement agencies.
22 No request for lists of local or statewide permit holders shall be made to any state or
23 local law enforcement agency, peace officer, or other agency of government other
24 than the Department of Kentucky State Police, and no state or local law
25 enforcement agency, peace officer, or agency of government, other than the
26 Department of Kentucky State Police, shall provide any information not entitled to
27 it by law.

- 1 (11) Within thirty (30) days after the changing of a permanent address, or within thirty
2 (30) days after the loss, theft, or destruction of a license, the licensee shall notify the
3 Department of Kentucky State Police of the loss, theft, or destruction. Failure to
4 notify the Department of Kentucky State Police shall constitute a noncriminal
5 violation with a penalty of twenty-five dollars (\$25) payable to the clerk of the
6 District Court. No court costs shall be assessed for a violation of this subsection.
7 When a licensee makes application to change his or her residence address or other
8 information on the license, neither the sheriff nor the Department of Kentucky State
9 Police shall require a surrender of the license until a new license is in the office of
10 the applicable sheriff and available for issuance. Upon the issuance of a new
11 license, the old license shall be destroyed by the sheriff.
- 12 (12) If a license is lost, stolen, or destroyed, the license shall be automatically invalid,
13 and the person to whom the same was issued may, upon payment of fifteen dollars
14 (\$15) to the Department of Kentucky State Police, obtain a duplicate, upon
15 furnishing a notarized statement to the Department of Kentucky State Police that the
16 license has been lost, stolen, or destroyed.
- 17 (13) (a) The commissioner of the Department of Kentucky State Police, or his or her
18 designee in writing, shall revoke the license of any person who becomes
19 permanently ineligible to be issued a license or have a license renewed under
20 the criteria set forth in this section.
- 21 (b) The commissioner of the Department of Kentucky State Police, or his or her
22 designee in writing, shall suspend the license of any person who becomes
23 temporarily ineligible to be issued a license or have a license renewed under
24 the criteria set forth in this section. The license shall remain suspended until
25 the person is again eligible for the issuance or renewal of a license.
- 26 (c) Upon the suspension or revocation of a license, the commissioner of the
27 Department of Kentucky State Police, or his or her designee in writing, shall:

- 1 1. Order any peace officer to seize the license from the person whose
- 2 license was suspended or revoked; or
- 3 2. Direct the person whose license was suspended or revoked to surrender
- 4 the license to the sheriff of the person's county of residence within two
- 5 (2) business days of the receipt of the notice.
- 6 (d) If the person whose license was suspended or revoked desires a hearing on the
- 7 matter, the person shall surrender the license as provided in paragraph (c)2. of
- 8 this subsection and petition the commissioner of the Department of Kentucky
- 9 State Police to hold a hearing on the issue of suspension or revocation of the
- 10 license.
- 11 (e) Upon receipt of the petition, the commissioner of the Department of Kentucky
- 12 State Police shall cause a hearing to be held in accordance with KRS Chapter
- 13 13B on the suspension or revocation of the license. If the license has not been
- 14 surrendered, no hearing shall be scheduled or held.
- 15 (f) If the hearing officer determines that the licensee's license was wrongly
- 16 suspended or revoked, the hearing officer shall order the commissioner of the
- 17 Department of Kentucky State Police to return the license and abrogate the
- 18 suspension or revocation of the license.
- 19 (g) Any party may appeal a decision pursuant to this subsection to the District
- 20 Court in the licensee's county of residence in the same manner as for the
- 21 denial of a license.
- 22 (h) If the license is not surrendered as ordered, the commissioner of the
- 23 Department of Kentucky State Police shall order a peace officer to seize the
- 24 license and deliver it to the commissioner.
- 25 (i) Failure to surrender a suspended or revoked license as ordered is a Class A
- 26 misdemeanor.
- 27 (j) The provisions of this subsection relating to surrender of a license shall not

1 apply if a court of competent jurisdiction has enjoined its surrender.

2 (k) When a domestic violence order or emergency protective order is issued
3 pursuant to the provisions of KRS Chapter 403 against a person holding a
4 license issued under this section, the holder of the permit shall surrender the
5 license to the court or to the officer serving the order. The officer to whom the
6 license is surrendered shall forthwith transmit the license to the court issuing
7 the order. The license shall be suspended until the order is terminated, or until
8 the judge who issued the order terminates the suspension prior to the
9 termination of the underlying domestic violence order or emergency protective
10 order, in writing and by return of the license, upon proper motion by the
11 license holder. Subject to the same conditions as above, a peace officer against
12 whom an emergency protective order or domestic violence order has been
13 issued shall not be permitted to carry a concealed deadly weapon when not on
14 duty, the provisions of KRS 527.020 to the contrary notwithstanding.

15 (14) (a) Not less than one hundred twenty (120) days prior to the expiration date of the
16 license, the Department of Kentucky State Police shall mail to each licensee a
17 written notice of the expiration and a renewal form prescribed by the
18 Department of Kentucky State Police. The outside of the envelope containing
19 the license renewal notice shall bear only the name and address of the
20 applicant. No other information relating to the applicant shall appear on the
21 outside of the envelope sent to the applicant. The licensee may renew his or
22 her license on or before the expiration date by filing with the sheriff of his or
23 her county of residence the renewal form, a notarized affidavit stating that the
24 licensee remains qualified pursuant to the criteria specified in subsections (3)
25 and (4) of this section, and the required renewal fee. The sheriff shall issue to
26 the applicant a receipt for the application for renewal of the license and shall
27 date the receipt.

1 (b) A license which has expired shall be void and shall not be valid for any
2 purpose other than surrender to the sheriff in exchange for a renewal license.

3 (c) The license shall be renewed to a qualified applicant upon receipt of the
4 completed renewal application, records check as specified in subsection (3) of
5 this section, determination that the renewal applicant is not ineligible for a
6 license as specified in subsection (4), and appropriate payment of fees. Upon
7 the issuance of a new license, the old license shall be destroyed by the sheriff.

8 A licensee who fails to file a renewal application on or before its expiration
9 date may renew his or her license by paying, in addition to the license fees, a
10 late fee of fifteen dollars (\$15). No license shall be renewed six (6) months or
11 more after its expiration date, and the license shall be deemed to be
12 permanently expired six (6) months after its expiration date. A person whose
13 license has permanently expired may reapply for licensure pursuant to
14 subsections (7), (8), and (9) of this section.

15 (15) The licensee shall carry the license at all times the licensee is carrying a concealed
16 firearm or other deadly weapon and shall display the license upon request of a law
17 enforcement officer. Violation of the provisions of this subsection shall constitute a
18 noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the
19 clerk of the District Court, but no court costs shall be assessed.

20 (16) Except as provided in KRS 527.020, no license issued pursuant to this section shall
21 authorize any person to carry a concealed firearm into:

22 (a) Any police station or sheriff's office;

23 (b) Any detention facility, prison, or jail;

24 (c) Any courthouse, solely occupied by the Court of Justice courtroom, or court
25 proceeding;

26 (d) Any meeting of the governing body of a county, municipality, or special
27 district; or any meeting of the General Assembly or a committee of the

1 General Assembly, except that nothing in this section shall preclude a member
2 of the body, holding a concealed deadly weapon license, from carrying a
3 concealed deadly weapon at a meeting of the body of which he or she is a
4 member;

5 (e) Any portion of an establishment licensed to dispense beer or alcoholic
6 beverages for consumption on the premises, which portion of the
7 establishment is primarily devoted to that purpose;

8 (f) Any elementary or secondary school facility without the consent of school
9 authorities as provided in KRS 527.070, any child-caring facility as defined in
10 KRS 199.011, any day-care center as defined in KRS 199.894, or any certified
11 family child-care home as defined in KRS 199.8982, except however, any
12 owner of a certified child-care home may carry a concealed firearm into the
13 owner's residence used as a certified child-care home;

14 (g) An area of an airport to which access is controlled by the inspection of
15 persons and property; or

16 (h) Any place where the carrying of firearms is prohibited by federal law.

17 (17) The owner, business or commercial lessee, or manager of a private business
18 enterprise, day-care center as defined in KRS 199.894 or certified or licensed family
19 child-care home as defined in KRS 199.8982, or a health-care facility licensed
20 under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit
21 persons holding concealed deadly weapon licenses from carrying concealed deadly
22 weapons on the premises and may prohibit employees, not authorized by the
23 employer, holding concealed deadly weapons licenses from carrying concealed
24 deadly weapons on the property of the employer. If the building or the premises are
25 open to the public, the employer or business enterprise shall post signs on or about
26 the premises if carrying concealed weapons is prohibited. Possession of weapons, or
27 ammunition, or both in a vehicle on the premises shall not be a criminal offense so

1 long as the weapons, or ammunition, or both are not removed from the vehicle or
2 brandished while the vehicle is on the premises. A private but not a public employer
3 may prohibit employees or other persons holding a concealed deadly weapons
4 license from carrying concealed deadly weapons, or ammunition, or both in vehicles
5 owned by the employer, but may not prohibit employees or other persons holding a
6 concealed deadly weapons license from carrying concealed deadly weapons, or
7 ammunition, or both in vehicles owned by the employee, except that the Justice and
8 Public Safety Cabinet may prohibit an employee from carrying any weapons, or
9 ammunition, or both other than the weapons, or ammunition, or both issued or
10 authorized to be used by the employee of the cabinet, in a vehicle while transporting
11 persons under the employee's supervision or jurisdiction. Carrying of a concealed
12 weapon, or ammunition, or both in a location specified in this subsection by a
13 license holder shall not be a criminal act but may subject the person to denial from
14 the premises or removal from the premises, and, if an employee of an employer,
15 disciplinary measures by the employer.

16 (18) All moneys collected by the Department of Kentucky State Police pursuant to this
17 section shall be used to administer the provisions of this section and KRS 237.138
18 to 237.142. By March 1 of each year, the Department of Kentucky State Police and
19 the Administrative Office of the Courts shall submit reports to the Governor, the
20 President of the Senate, and the Speaker of the House of Representatives, indicating
21 the amounts of money collected and the expenditures related to this section, KRS
22 237.138 to 237.142, and KRS 237.115, 244.125, 527.020, and 527.070, and the
23 administration of the provisions of this section, KRS 237.138 to 237.142, and KRS
24 237.115, 244.125, 527.020, and 527.070.

25 (19) The General Assembly finds as a matter of public policy that it is necessary to
26 provide statewide uniform standards for issuing licenses to carry concealed firearms
27 and to occupy the field of regulation of the bearing of concealed firearms to ensure

1 that no person who qualifies under the provisions of this section is denied his rights.
2 The General Assembly does not delegate to the Department of Kentucky State
3 Police the authority to regulate or restrict the issuing of licenses provided for in this
4 section beyond those provisions contained in this section. This section shall be
5 liberally construed to carry out the constitutional right to bear arms for self-defense.

6 (20) (a) A person who has a valid license issued by another state of the United States
7 to carry a concealed deadly weapon in that state may, subject to provisions of
8 Kentucky law, carry a concealed deadly weapon in Kentucky, and his or her
9 license shall be considered as valid in Kentucky.

10 (b) The Department of Kentucky State Police shall, not later than thirty (30) days
11 after July 15, 1998, and not less than once every six (6) months thereafter,
12 make written inquiry of the concealed deadly weapon carrying licensing
13 authorities in each other state as to whether a Kentucky resident may carry a
14 concealed deadly weapon in their state based upon having a valid Kentucky
15 concealed deadly weapon license, or whether a Kentucky resident may apply
16 for a concealed deadly weapon carrying license in that state based upon
17 having a valid Kentucky concealed deadly weapon license. The Department of
18 Kentucky State Police shall attempt to secure from each other state permission
19 for Kentucky residents who hold a valid Kentucky concealed deadly weapon
20 license to carry concealed deadly weapons in that state, either on the basis of
21 the Kentucky license or on the basis that the Kentucky license is sufficient to
22 permit the issuance of a similar license by the other state. The Department of
23 Kentucky State Police shall enter into a written reciprocity agreement with the
24 appropriate agency in each state that agrees to permit Kentucky residents to
25 carry concealed deadly weapons in the other state on the basis of a Kentucky-
26 issued concealed deadly weapon license or that will issue a license to carry
27 concealed deadly weapons in the other state based upon a Kentucky concealed

1 deadly weapon license. If a reciprocity agreement is reached, the requirement
2 to recontact the other state each six (6) months shall be eliminated as long as
3 the reciprocity agreement is in force. The information shall be a public record
4 and shall be available to individual requesters free of charge for the first copy
5 and at the normal rate for open records requests for additional copies.

6 (21) By March 1 of each year, the Department of Kentucky State Police shall submit a
7 statistical report to the Governor, the President of the Senate, and the Speaker of the
8 House of Representatives, indicating the number of licenses issued, revoked,
9 suspended, and denied since the previous report and in total and also the number of
10 licenses currently valid. The report shall also include the number of arrests,
11 convictions, and types of crimes committed since the previous report by individuals
12 licensed to carry concealed weapons.

13 (22) The following provisions shall apply to concealed deadly weapon training classes
14 conducted by the Department of Criminal Justice Training or any other agency
15 pursuant to this section:

16 (a) No concealed deadly weapon instructor trainer shall have his or her
17 certification as a concealed deadly weapon instructor trainer reduced to that of
18 instructor or revoked except after a hearing conducted pursuant to KRS
19 Chapter 13B in which the instructor is found to have committed an act in
20 violation of the applicable statutes or administrative regulations;

21 (b) No concealed deadly weapon instructor shall have his or her certification as a
22 concealed deadly weapon instructor license suspended or revoked except after
23 a hearing conducted pursuant to KRS Chapter 13B in which the instructor is
24 found to have committed an act in violation of the applicable statutes or
25 administrative regulations;

26 (c) The department shall not require prior notification that an applicant class or
27 instructor class will be conducted by a certified instructor or instructor trainer;

- 1 (d) Each concealed deadly weapon instructor or instructor trainer who teaches a
2 concealed deadly weapon applicant or concealed deadly weapon instructor
3 class shall supply the Department of Criminal Justice Training with a class
4 roster indicating which students enrolled and successfully completed the class,
5 and which contains the name and address of each student, within five (5)
6 working days of the completion of the class. The information may be sent by
7 mail, facsimile, e-mail, or other method which will result in the receipt of or
8 production of a hard copy of the information. The postmark, facsimile date, or
9 e-mail date shall be considered as the date on which the notice was sent.
10 Concealed deadly weapon class applicant, instructor, and instructor trainer
11 information and records shall be confidential. The department may release to
12 any person or organization the name, address, and telephone number of a
13 concealed deadly weapon instructor or instructor trainer if that instructor or
14 instructor trainer authorizes the release of the information in writing. The
15 department shall include on any application for an instructor or instructor
16 trainer certification a statement that the applicant either does or does not
17 desire the applicant's name, address, and telephone number to be made public;
- 18 (e) An instructor trainer who assists in the conduct of a concealed deadly weapon
19 instructor class or concealed deadly weapon applicant class for more than two
20 (2) hours shall be considered as to have taught a class for the purpose of
21 maintaining his or her certification. All class record forms shall include spaces
22 for assistant instructors to sign and certify that they have assisted in the
23 conduct of a concealed deadly weapon instructor or concealed deadly weapon
24 class;
- 25 (f) An instructor who assists in the conduct of a concealed deadly weapon
26 applicant class for more than two (2) hours shall be considered as to have
27 taught a class for the purpose of maintaining his or her license. All class

1 record forms shall include spaces for assistant instructors to sign and certify
2 that they have assisted in the conduct of a concealed deadly weapon class;

3 (g) If the Department of Criminal Justice Training believes that a firearms
4 instructor trainer or certified firearms instructor has not in fact complied with
5 the requirements for teaching a certified firearms instructor or applicant class
6 by not teaching the class as specified in KRS 237.126, or who has taught an
7 insufficient class as specified in KRS 237.128, the department shall send to
8 each person who has been listed as successfully completing the concealed
9 deadly weapon applicant class or concealed deadly weapon instructor class a
10 verification form on which the time, date, date of range firing if different from
11 the date on which the class was conducted, location, and instructor of the class
12 is listed by the department and which requires the person to answer "yes" or
13 "no" to specific questions regarding the conduct of the training class. The
14 form shall be completed under oath and shall be returned to the Department of
15 Criminal Justice Training not later than forty-five (45) days after its receipt. A
16 person who fails to complete the form, to sign the form, or to return the form
17 to the Department of Criminal Justice Training within the time frame
18 specified in this section or who, as a result of information on the returned
19 form, is determined by the Department of Criminal Justice Training, following
20 a hearing pursuant to KRS Chapter 13B, to not have received the training
21 required by law shall have his or her concealed deadly weapon license
22 revoked by the Department of Kentucky State Police, following a hearing
23 conducted by the Department of Criminal Justice Training pursuant to KRS
24 Chapter 13B, at which hearing the person is found to have violated the
25 provisions of this section or who has been found not to have received the
26 training required by law;

27 (h) The department shall annually, not later than December 31 of each year, report

1 to the Legislative Research Commission:

- 2 1. The number of firearms instructor trainers and certified firearms
3 instructors whose certifications were suspended, revoked, denied, or
4 who were otherwise disciplined;
- 5 2. The reasons for the imposition of suspensions, revocations, denials, or
6 other discipline; and
- 7 3. Suggestions for improvement of the concealed deadly weapon applicant
8 training program and instructor process;

9 (i) If a concealed deadly weapon license holder is convicted of, pleads guilty to,
10 or enters an Alford plea to a felony offense, then his or her concealed deadly
11 weapon license shall be forthwith revoked by the Department of Kentucky
12 State Police as a matter of law;

13 (j) If a concealed deadly weapon instructor or instructor trainer is convicted of,
14 pleads guilty to, or enters an Alford plea to a felony offense, then his or her
15 concealed deadly weapon instructor certification or concealed deadly weapon
16 instructor trainer certification shall be revoked by the Department of Criminal
17 Justice Training as a matter of law; and

18 (k) The following shall be in effect:

- 19 1. Action to eliminate the firearms instructor trainer program is prohibited.
20 The program shall remain in effect, and no firearms instructor trainer
21 shall have his or her certification reduced to that of certified firearms
22 instructor;
- 23 2. The Department of Kentucky State Police shall revoke the concealed
24 deadly weapon license of any person who received no firearms training
25 as required by KRS 237.126 and administrative regulations, or who
26 received insufficient training as required by KRS 237.128 and
27 administrative regulations, if the person voluntarily admits nonreceipt of

training or admits receipt of insufficient training, or if either nonreceipt of training or receipt of insufficient training is proven following a hearing conducted by the Department of Criminal Justice Training pursuant to KRS Chapter 13B.

➔ Section 6. KRS 35.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "State" means one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands

~~["National Guard" means the Kentucky Army National Guard and the Kentucky Air National Guard];~~

(2) "Cadet," "candidate," or "midshipman" means a person who is enrolled in or attending a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces

~~["Active militia" means a volunteer defense unit other than the National Guard];~~

(3) "Officer" means a commissioned or~~officer, including a~~ warrant officer;

(4) "Superior commissioned officer" means a commissioned officer superior in rank or command;

(5) "Enlisted member~~person~~" means a~~any~~ person~~who is serving~~ in an enlisted grade~~in any force of the National Guard or active militia~~;

(6) "State active duty" means full-time military duty in the state military forces~~active service of the state~~ under an order of the Governor or otherwise issued by authority of law, and paid by state funds, and includes~~including~~ travel to and from the duty;

(7) "Military court" means a court-martial or~~;~~ a court of inquiry~~;~~ ~~a provost court, or a military commission~~;

(8) "Military judge" means an official of a general and special court-martial~~courts~~

1 ~~martial~~] detailed in accordance with KRS 35.125;

2 (9) "Classified information" means:

3 (a) Any information or material that has been determined by an official of the
 4 United States or any state pursuant to law, an executive order, or regulation
 5 to require protection against unauthorized disclosure for reasons of
 6 national or state security; and

7 (b) Any restricted data, as defined in the Atomic Energy Act of 1954, 42 U.S.C.
 8 sec. 2014(y)~~["Subject person" means person subject to this chapter];~~

9 (10) "Code" means this chapter;

10 (11) "National security" means the national defense and foreign relations of the
 11 United States~~["Commissioned officer" includes a commissioned warrant officer];~~

12 (12) "Commanding officer" includes only commissioned officers of the state military
 13 forces and shall include officers in charge only when administering nonjudicial
 14 punishment under Section 19 of this Act. The term "commander" has the same
 15 meaning unless the context otherwise requires;

16 (13) "Day" means calendar day and is not synonymous with the term "unit training
 17 assembly." Any punishment authorized by this chapter which is measured in
 18 terms of days shall, when served in a status other than annual field training, be
 19 construed to mean succeeding duty days~~["Grade" means a step or degree in a~~
 20 ~~graduated scale of office or military rank that is established by law or regulation];~~

21 (14) "Record," when used in connection with the proceedings of a court-martial,
 22 means:

23 (a) An official written transcript, written summary, or other writing relating to
 24 the proceedings; or

25 (b) An official audiotape, videotape, digital image or file, or similar material
 26 from which sound, or sound and visual images, depicting the proceedings
 27 may be reproduced~~["Rank" means order of precedence among members of~~

1 the National Guard or active militia];

2 (15) "Duty status *other than state active duty*" means *any other type of duty not in*
 3 *federal service and not full-time in the active service of the state; under an order*
 4 *issued by authority of law and includes*~~[" includes state active duty and any other~~
 5 ~~type of state military duty, including]~~ travel to and from the duty;

6 (16) "*Judge*~~[State judge]~~ advocate" means *a*~~[the]~~ commissioned officer *of the organized*
 7 *state military forces who is a member in good standing of the bar of the highest*
 8 *court of a state, and is:*

9 *(a) Certified or designated as a judge advocate in the Judge Advocate General's*
 10 *Corps of the Army, Air Force, Navy, Marine Corps, or Coast Guard, or a*
 11 *reserve component of one of these; or*

12 *(b) Certified as a non-federally recognized judge advocate, under regulations*
 13 *promulgated pursuant to this provision, by the senior judge advocate of the*
 14 *commander of the force in the state military forces of which the accused is a*
 15 *member, as competent to perform those military justice duties required by*
 16 *this code. If there is no judge advocate available, then the certification may*
 17 *be made by a senior judge advocate of the commander of another force in*
 18 *the state military forces, as the convening authority directs*~~[responsible for~~
 19 ~~supervising the administration of military justice in the National Guard or~~
 20 ~~active militia];~~

21 (17) "Accuser" means a person who signs and swears to charges, any person who directs
 22 that charges *nominally*~~[normally]~~ be signed and sworn to by another, and any *other*
 23 person who has an interest other than an official interest in the prosecution of the
 24 accused;

25 (18) "Military" refers to any or all of the Armed Forces;

26 (19) "Convening authority" includes, in addition to the person who convened the court, a
 27 commissioned officer commanding for the time being or a successor in command *to*

1 the convening authority;~~[and]~~

2 (20) "Officer in charge" means a member of the naval militia, the Navy, the Marine
 3 Corps, or the Coast Guard designated as such by appropriate authority;~~["Peace~~
 4 ~~officer" as used in this chapter means any sheriff, deputy sheriff, constable, deputy~~
 5 ~~constable, sworn police officer, sworn enforcement officer of the Department of~~
 6 ~~Kentucky State Police or other duly authorized state law enforcement agency, and~~
 7 ~~other persons with similar authority to make arrests under the provisions of the~~
 8 ~~Kentucky Revised Statutes.]~~

9 (21) "Senior force commander" means the commander of the same force of the state
 10 military forces as the accused;

11 (22) "Senior force judge advocate" means the senior judge advocate of the
 12 commander of the same force of the state military forces as the accused and who
 13 is that commander's chief legal advisor;

14 (23) "State military forces" means the Kentucky National Guard as defined in Title 32
 15 of the United States Code and as organized under the Constitution and laws of
 16 the Commonwealth of Kentucky. The unorganized militia, state defense force,
 17 state national guard, home guard, or any other name of any state force that does
 18 not meet this definition shall not be part of the "state military forces" under this
 19 code; and

20 (24) "Military offenses" means those offenses prescribed under Sections 81, 82, 83 to
 21 121, and 135 to 137 of this Act.

22 ➔Section 7. KRS 35.015 is amended to read as follows:

23 (1) This code applies to all members of the state military forces at all times and in all
 24 places.

25 (2) Subject matter jurisdiction is established if a nexus exists between an offense,
 26 either military or non-military, and the state military force. Courts-martial have
 27 primary jurisdiction of military offenses of this code. A proper civilian court has

1 primary jurisdiction of a non-military offense when an act or omission violates
 2 both this code and local criminal law, foreign or domestic. In such a case, a
 3 court-martial may be initiated only after the civilian authority has declined to
 4 prosecute or dismissed the charge, provided jeopardy has not attached.
 5 Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory
 6 crimes must be determined by the underlying offense[All persons belonging to the
 7 National Guard or active militia and who are not in federal service under a call or
 8 order of the President of the United States shall be subject to the provisions of this
 9 code].

10 ➔ Section 8. KRS 35.020 is amended to read as follows:

11 (1) Each person[All persons] discharged from the state military forces who is
 12 later[National Guard or active militia subsequently] charged with having
 13 fraudulently obtained a[said] discharge is, subject to Section 44 of this Act,[shall
 14 be] subject to trial by court-martial on that[said] charge and is, after apprehension,[
 15 shall be] subject to this code while in custody under the direction of the state
 16 military forces for that trial. Upon conviction of that[said] charge that person
 17 is[they shall be] subject to trial by court-martial for all offenses[any offense] under
 18 this code committed prior to the fraudulent discharge.

19 (2) No[Any] person who has deserted from the state military forces may be[National
 20 Guard or active militia shall not be] relieved from amenability to the jurisdiction of
 21 this code by virtue of a separation from any subsequent period of service.

22 [(3) The fact that any person charged with an offense under this code is separated from
 23 the service while proceedings are pending or while undergoing sentence shall not
 24 affect the jurisdiction of any court-martial.]

25 ➔ Section 9. KRS 35.030 is amended to read as follows:

26 (1) This code has applicability at all times and[shall be applicable] in all places
 27 subject to the personal jurisdiction as provided in Section 7 of this Act, or, if not

1 in a duty status, that there is a nexus between the act or omission constituting the
 2 offense and the efficient functioning of the state military forces; however, this
 3 grant of military jurisdiction shall neither preclude nor limit civilian jurisdiction
 4 over an offense, which is limited only by the prohibition of double
 5 jeopardy~~[within the state. It shall also apply to all subject persons while serving~~
 6 ~~without the state and while going to and returning from such service without the~~
 7 ~~state in like manner and to the same extent as while such persons are serving within~~
 8 ~~the state].~~

9 (2) Courts-martial and courts of inquiry may be convened and held in units of the state
 10 military forces while those units are serving outside~~[National Guard or active~~
 11 ~~militia while serving without the state with]~~ the same jurisdiction and powers as to
 12 persons subject to this code as if the proceeding were held inside the state, and
 13 offenses committed outside the state may be tried and punished either inside or
 14 outside~~[if held within the state and offenses committed without the state may be~~
 15 ~~tried and punished either without the state or within]~~ the state.

16 ➔ Section 10. KRS 35.022 is repealed, reenacted as a new section of KRS Chapter
 17 35, and amended to read as follows:

18 (1) The senior force judge advocates in each of the state's military forces or that
 19 judge advocate's delegates shall make frequent inspections in the field of
 20 supervision of the administration of military justice~~[The Governor, on the~~
 21 ~~recommendation of the adjutant general, shall appoint an officer of the National~~
 22 ~~Guard or active militia as state judge advocate. To be eligible for appointment, an~~
 23 ~~officer must be a member of the bar of the highest court of the state and must have~~
 24 ~~been a member of the bar of the state for at least five (5) years].~~

25 (2)~~[The adjutant general may appoint as many assistant state judge advocates as he~~
 26 ~~considers necessary. To be eligible for appointment, assistant state judge advocates~~
 27 ~~must be officers of the National Guard or active militia and members of the bar of~~

1 the highest court of the state.

2 (3)} Convening authorities shall at all times communicate directly with their~~[-staff]~~
3 judge advocates in matters relating to the administration of military justice. The~~[-;~~
4 and the staff} judge advocate of any command is entitled to communicate directly
5 with the~~[-staff]~~ judge advocate of a superior or subordinate command, or with the
6 state judge advocate.

7 (3){(4)} No person who has acted as member, military judge, trial counsel,~~[-assistant~~
8 trial counsel,} defense counsel,~~[-assistant defense counsel]~~ or investigating officer,
9 or who has been a witness~~[-for either the prosecution or defense]~~ in any case~~[-]~~ may
10 later act as a~~[-staff]~~ judge advocate to any reviewing authority upon the same case.

11 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
12 READ AS FOLLOWS:

13 Procedures pertaining to the selection and regulation of military judges shall be
14 promulgated by the adjutant general and approved by the Governor of the
15 Commonwealth of Kentucky.

16 ➔Section 12. KRS 35.035 is amended to read as follows:

- 17 (1) Apprehension is the taking of a person into custody~~[-of a person]~~.
- 18 (2) Any person authorized by this code or by 10 U.S.C. Chapter 47, or by regulations
19 issued under either, to~~[-officer, warrant officer or peace officer as defined in this~~
20 ~~chapter may]~~ apprehend~~[-subject]~~ persons subject to this code, any marshal of a
21 court-martial appointed pursuant to the provisions of this code, and any peace
22 officer or civil officer having authority to apprehend offenders under the laws of
23 the United States or of a state, may do so upon~~[-having]~~ probable cause~~[-to believe]~~
24 that an offense has been committed and that the person apprehended committed it.
- 25 (3) Commissioned officers, warrant officers, petty officers, and noncommissioned
26 officers have authority to quell quarrels, frays, and disorders among persons
27 subject to this code and to apprehend persons subject to this code who take part

~~therein~~[Any enlisted person as defined in this chapter may apprehend subject persons upon the direct verbal or written order of a commissioned officer or convening authority].

(4) *If an offender is apprehended outside the state, the offender's return to the jurisdiction must be in accordance with normal extradition procedures or by reciprocal agreement.*

(5) No *person authorized by this section to apprehend persons subject to this code or the place where the offender is confined, restrained, held, or otherwise housed may require payment of any*[peace officer, jailer or other state officer shall demand or require payment of any fee or charge of any nature for apprehending or placing in confinement any subject person. However, such prohibition shall not apply to such] fee or charge *for receiving, apprehending, confining, restraining, holding, or otherwise housing a person except as otherwise provided by law*[being assessed against the subject person as a court cost or jail fee].

➔ Section 13. KRS 35.045 is amended to read as follows:

(1) Arrest is the restraint of a person by an order not imposed as a punishment for an offense, directing *the person*[him] to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted *member*[person] may be ordered[~~apprehended or~~] into arrest or confinement by any *commissioned* officer by an order, oral or written, delivered in person, or through other[~~subject~~] persons[, or through any person authorized by] *subject to* this code[~~to apprehend persons~~]. A commanding officer may authorize warrant officers, *petty officers*, or noncommissioned officers to order enlisted members of *the commanding officer's*[his] command or subject to *the commanding officer's*[his] authority into arrest or confinement.

(3) *A commissioned officer, a warrant officer, or a civilian subject to this code or to trial thereunder*[An officer] may be ordered into arrest or confinement only by a

1 commanding officer to whose authority he or she is subject, by an order, oral or
 2 written, delivered in person or by another commissioned officer. The authority to
 3 order such persons into arrest or confinement may not be delegated.

4 (4) No person may~~[shall]~~ be ordered into arrest or confinement except for probable
 5 cause.

6 (5) ~~[Nothing in]~~This section does not~~[shall be construed to]~~ limit the authority of
 7 persons authorized to apprehend offenders to secure the custody of an alleged
 8 offender until proper authority may be notified.

9 ➔Section 14. KRS 35.050 is amended to read as follows:

10 ~~[(1)]~~ Any subject person charged with an offense under this code may~~[shall]~~ be ordered~~[~~
 11 ~~apprehended or]~~ into arrest or confinement, as circumstances may require. When
 12 any~~[subject]~~ person subject to this code is placed in arrest or confinement prior to
 13 trial, immediate steps shall be taken to inform the person~~[him]~~ of the specific
 14 wrong of which the person~~[he]~~ is accused and diligent steps shall be taken to try
 15 the person or to dismiss the charges and release the person.~~[This notification may~~
 16 ~~be done by serving the accused with a copy of the charge sheet or specifications~~
 17 ~~attached to the warrant or order of arrest, confinement or detainment.~~

18 ~~(2) Upon apprehension, arrest or confinement and notification thereof to the convening~~
 19 ~~authority or his authorized representative, steps shall be taken within the shortest~~
 20 ~~practicable period of time to try the accused or otherwise dispose of the charges.~~

21 ~~(3) The convening authority shall, upon issuing a warrant or order for the confinement,~~
 22 ~~arrest or apprehension of a subject person, subject to the exception set out in~~
 23 ~~subsection (4) of this section, provide on the face of same for the admission of the~~
 24 ~~accused to bail. The accused shall be admitted to bail by posting bond in the amount~~
 25 ~~ordered by the convening authority, but not to exceed the maximum fine for the~~
 26 ~~offense. Bail may be accepted by the jailer who has the accused in custody or by a~~
 27 ~~clerk of the Court of Justice, in lieu of the presence of the convening authority or his~~

1 authorized representative, but if accepted by an officer of the Commonwealth, said
 2 bail shall be transmitted to the convening authority or his authorized representative
 3 for disposition.

4 (4) ~~If it is the determination of the convening authority that bail should not be allowed~~
 5 ~~either because the convening authority has probable cause to believe that the~~
 6 ~~accused would not appear for further proceedings or that if released the accused~~
 7 ~~would present an immediate threat to the public safety and welfare or the good order~~
 8 ~~and discipline of the military, such determination shall be noted on the face of the~~
 9 ~~warrant or order for the detention of the subject person. In the event that such a~~
 10 ~~determination has been made a hearing shall be held within two (2) working days of~~
 11 ~~the apprehension, arrest or confinement of the accused to determine if the accused~~
 12 ~~should be admitted to bail. In the absence of the convening authority or his~~
 13 ~~authorized representative, such hearing may be held by a judge of the Court of~~
 14 ~~Justice.]~~

15 ➔ Section 15. KRS 35.055 is amended to read as follows:

16 (1) *If a person subject to this code is confined before*~~[Confinement and imprisonment~~
 17 ~~other than in a guardhouse, whether prior to], during, or after trial, confinement~~
 18 *shall be in a civilian or military confinement facility*~~[by a military court, shall be~~
 19 ~~executed in jails, penitentiaries or prisons designated by the Governor or by the~~
 20 ~~adjutant general for that purpose].~~

21 (2) No *person authorized to receive prisoners pursuant to subsection (1) of this*
 22 *section may*~~[provost marshal, commander of a guard, sheriff or deputy sheriff or~~
 23 ~~other peace officer, warden, jailer or officer of any jail, penitentiary or prison, as~~
 24 ~~designated in subsection (1) of this section, shall] refuse to receive[, keep,] or~~
 25 *keep*~~[transport] any prisoner committed to the person's[his] charge by a~~
 26 *commissioned officer of the state military forces,* when the committing
 27 *officer*~~[person] furnishes a statement, signed by the officer[him], of the offense~~

charged against the prisoner, unless otherwise authorized by law.

(3) Every person authorized to receive prisoners pursuant to subsection (1)~~[provost marshal, commander of a guard, warden, jailer or officer, as set out in subsection (2)]~~ of this section, to whose charge a prisoner is committed shall, within twenty-four (24) hours after that~~[such]~~ commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the~~[such]~~ prisoner, the offense charged against the prisoner~~[him]~~, and the name of the person who ordered or authorized the commitment.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

No member of the state military forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the Armed Forces.

➔Section 17. KRS 35.060 is amended to read as follows:

~~[Subject to the provisions of KRS 35.280,]~~No person, while being held for trial or awaiting a verdict~~[the results of trial]~~, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person~~[him]~~, nor shall the arrest or confinement imposed upon the person~~[him]~~ be any more rigorous than the circumstances require to insure the person's~~[his]~~ presence, but the person~~[he]~~ may be subjected to minor punishment during that~~[such]~~ period for infractions of discipline.

➔Section 18. KRS 35.065 is amended to read as follows:

(1) A person subject to this code~~[Under such regulations as may be issued pursuant to this chapter, a subject person]~~ accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial or confinement.

(2) When delivery under this chapter is made to any civil authority of a person undergoing sentence of a court-martial, the~~[such]~~ delivery, if followed by conviction in a civil tribunal, interrupts~~[shall be held to interrupt]~~ the execution of

the sentence of the court-martial, and the offender, after having answered to the civil authorities for ~~the~~^[his] offense, shall, upon the request of competent military authority~~[the adjutant general]~~, be returned to the place of original~~[military]~~ custody for the completion of the person's~~[said court martial]~~ sentence.

➔ Section 19. KRS 35.070 is amended to read as follows:

(1) Under such regulations as prescribed~~[may be issued pursuant to this chapter]~~, any commanding officer, and for purposes of this section, officers-in-charge, may~~[, in addition to or in lieu of admonition or reprimand,]~~ impose~~[one (1) or more of the following]~~ disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this section. The Governor, the adjutant general, or an officer of a general or flag rank in command may delegate the powers under this section to a principal assistant who is a member of the state military forces.

(2) Any commanding officer may impose upon enlisted members of the officer's command:

(a) An admonition~~[Upon officers of his command:~~

1. ~~Restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two (2) consecutive weeks; or~~
2. ~~A fine not exceeding two hundred dollars (\$200)];~~

(b) A reprimand;

(c) The withholding of privileges for not more than six (6) months;

(d) The ~~[Upon other military personnel:~~

1. ~~Restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two (2) consecutive weeks;~~
2. ~~Extra duties for a period not more than fourteen (14) days which need not be consecutive, and not to exceed two (2) hours per day, holidays included;~~
3. ~~]forfeiture of pay~~ of not more than seven (7) days' pay;

- 1 (e) A fine of not more than seven (7) days' pay~~[and allowances not exceeding~~
 2 ~~one hundred dollars (\$100) or a fine of a like amount];~~
- 3 (f) [4.—]A reduction to *the next inferior pay*~~[next lower]~~ grade if the grade from
 4 which demoted is within the promotion authority of the officer imposing the
 5 reduction or any officer subordinate to the one who imposes the reduction;
- 6 (g) Extra duties, including fatigue or other duties, for not more than fourteen
 7 (14) days, which need not be consecutive; and
- 8 (h) Restriction to certain specified limits, with or without suspension from duty,
 9 for not more than fourteen (14) days, which need not be consecutive.
- 10 (3) Any commanding officer of the grade of major or lieutenant commander, or
 11 above may impose upon enlisted members of the officer's command:
- 12 (a) Any punishment authorized in subsection (2)(a), (b), and (c) of this section;
 13 (b) The forfeiture of not more than one-half (1/2) of one (1) month's pay per
 14 month for two (2) months;
- 15 (c) A fine of not more than one (1) month's pay;
- 16 (d) A reduction to the lowest or any intermediate pay grade, if the grade from
 17 which demoted is within the promotion authority of the officer imposing the
 18 reduction or any officer subordinate to the one who imposes the reduction,
 19 but an enlisted member in a pay grade above E-4 may not be reduced more
 20 than two (2) pay grades;
- 21 (e) Extra duties, including fatigue or other duties, for not more than forty-five
 22 (45) days which need not be consecutive; and
- 23 (f) Restriction to certain specified limits, with or without suspension from duty,
 24 for not more than sixty (60) days which need not be consecutive.
- 25 (4) The Governor, the adjutant general, an officer exercising general court-martial
 26 convening authority, or an officer of a general or flag rank in command may
 27 impose:

1 (a) Upon officers in the officer's command:

2 1. Any punishment authorized in paragraphs (a), (b), (c), or (f) of
3 subsection (3) of this section; and

4 2. Arrest in quarters for not more than thirty (30) days which need not be
5 consecutive;

6 (b) Upon enlisted members of the officer's command, any punishment
7 authorized in subsection (3) of this section.

8 (5) Whenever any of those punishments are combined to run consecutively, the total
9 length of the combined punishment cannot exceed the authorized duration of the
10 longest punishment in the combination, and there must be an apportionment of
11 punishments so that no single punishment in the combination exceeds its
12 authorized length under this section.

13 (6) Prior to the offer of non-judicial punishment, the commanding officer shall
14 determine whether arrest in quarters or restriction shall be considered as
15 punishments. Should the commanding officer determine that the punishment
16 options may include arrest in quarters or restriction, the accused shall be notified
17 of the right to demand a trial by court-martial. Should the commanding officer
18 determine that the punishment options will not include arrest in quarters or
19 restriction, the accused shall be notified that there is no right to trial by courts-
20 martial in lieu of non-judicial punishment.

21 (7) The officer who imposes punishment, or the successor in command, may, at any
22 time, suspend, set aside, mitigate, or remit any part or amount of the punishment
23 and restore all rights, privileges, and property affected. The officer also may
24 mitigate:

25 (a) Reduction in grade to forfeiture of pay;

26 (b) Arrest in quarters to restriction; or

27 (c) Extra duties to restriction.

The mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

~~(8) [was established by the command or an equivalent or lower command; or~~

~~5. — A combination of these punishments.~~

~~(2) — Prior to being informed of the disciplinary action to be taken under this section, the person to be punished shall have the right to demand a trial by court-martial for the offense.~~

~~(3) — Under such regulations as may be issued pursuant to this chapter, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise such powers, and the applicability of this section to an accused on active service who demands trial by a court-martial.~~

~~(4) — An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge such of the punishments authorized to be imposed by commanding officers as may be specifically prescribed by regulations issued pursuant to this chapter.~~

~~(5) — Except where punishment has been imposed by the Governor,]~~A person punished under this section who considers *the*~~[his]~~ punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority *within fifteen (15) days after the punishment is either announced or sent to the accused, as the commander may determine.* The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The *superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (7) of this section by the* officer who *imposed*~~[imposes]~~ the punishment.

Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice~~[, his successor in command and superior authority may suspend, set aside or remit any part or amount of the punishment and restore all rights, privileges and property affected].~~

(9) [(6)] The imposition and enforcement of disciplinary punishment under ~~[authority of]~~ this section for any act or omission ~~is [shall]~~ not ~~[be]~~ a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing ~~[arising]~~ out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the amount of punishment to be adjudged in the event of a finding of guilty.

(10) [(7)] Whenever a punishment of forfeiture of pay ~~[and allowances]~~ is imposed as provided in this section, the forfeiture may apply to pay accruing before, on, ~~[or allowances becoming due on]~~ or after the date that ~~[such]~~ punishment is imposed ~~[and to pay allowances accrued before such a date].~~

(11) Regulations may prescribe the form of forfeiture of records to be kept of proceedings under this section and may prescribe that certain categories of those proceedings shall be in writing.

(12) "Day," as it is used in this section, is defined as follows:

(a) For the purpose of pay, one (1) day shall equal one (1) active duty military pay day.

(b) For all other purposes, one (1) day shall equal one (1) calendar day.

➔ Section 20. KRS 35.075 is amended to read as follows:

~~[(1) In the National Guard and active militia there are general, special and summary courts martial constituted like similar courts of the Armed Forces of the United States.~~

1 They have the jurisdiction and powers, except as to punishments, and shall follow the
 2 forms and procedures provided for those courts.

3 (2)—}The two (2)~~[three (3)]~~ kinds of courts-martial in the state military forces are:

4 (1)(a) General courts-martial, consisting of:

5 (a)~~[1.]~~ ~~[Consisting of]~~A military judge and not less than five (5) members; or

6 (b)~~[2.]~~ Only a military judge, if before the court is assembled the accused,
 7 knowing the identity of the military judge and after consultation with defense
 8 counsel, requests orally on the record or in writing a court composed only of
 9 a military judge and the military judge approves.

10 (2)(b) Special courts-martial, consisting of:

11 (a)~~[1.]~~ ~~[Consisting of]~~A military judge and not less than three (3) members; or

12 (b)~~[2.]~~ Only a military judge, if one has been detailed to the court, and~~[if]~~ the
 13 accused under the same conditions as those prescribed in subsection
 14 (1)(b)~~[subparagraph (2)(a)2.]~~ of this section~~[subsection]~~ so requests.

15 ~~[(c) Summary courts martial, consisting of one (1) commissioned officer.]~~

16 ➔Section 21. KRS 35.080 is amended to read as follows:

17 Each component of the state military forces has~~[The National Guard or active militia~~
 18 ~~shall have]~~ court-martial jurisdiction over all members of the particular component who
 19 are subject to this code~~[subject persons. The Governor or adjutant general shall have the~~
 20 ~~power to promulgate rules and regulations governing the conduct of court martial~~
 21 ~~proceedings].~~

22 ➔Section 22. KRS 35.085 is amended to read as follows:

23 Subject to Section 21 of this Act, general courts-martial~~[shall]~~ have jurisdiction to try~~[~~
 24 ~~subject]~~ persons subject to this code for any offense made punishable~~[for which they~~
 25 ~~may be punished]~~ by this code, and may, under those limitations as the Governor may
 26 prescribe, adjudge any punishment not forbidden by this code~~[, in connection therewith,~~
 27 ~~shall have the power to impose the following punishments:~~

- 1 ~~(1) — Confinement for not more than six (6) months;~~
- 2 ~~(2) — Fines or forfeitures of pay and allowances, not exceeding two hundred dollars~~
- 3 ~~(\$200);~~
- 4 ~~(3) — Dismissal, dishonorable or other punitive discharge;~~
- 5 ~~(4) — Reprimand;~~
- 6 ~~(5) — Reduction of enlisted personnel to the lowest enlisted grade; or~~
- 7 ~~(6) — A combination of these punishments}.~~

8 ➔ Section 23. KRS 35.090 is amended to read as follows:

9 ~~{(1) —}~~ Subject to Section 21 of this Act, special courts-martial have jurisdiction to try
 10 persons subject to this code for any offense made punishable by this code, and may,
 11 under those limitations as the Governor may prescribe, adjudge any punishment not
 12 forbidden by this code except dishonorable discharge, dismissal, confinement for more
 13 than one (1) year, forfeiture of pay exceeding two-thirds (2/3) pay per month, or
 14 forfeiture of pay for more than one (1) year~~], except commissioned officers, for any~~
 15 ~~offense for which they may be punished under this code, and in connection therewith,~~
 16 ~~shall have the power to impose the following punishments:~~

- 17 (a) — ~~Confinement not to exceed ninety (90) days;~~
- 18 (b) — ~~Fines or forfeitures of pay and allowances not exceeding one hundred dollars~~
- 19 ~~(\$100);~~
- 20 (c) — ~~Bad conduct discharge;~~
- 21 (d) — ~~Reprimand;~~
- 22 (e) — ~~Reduction of enlisted personnel to the lowest enlisted grade; or~~
- 23 (f) — ~~A combination of these punishments.~~
- 24 (2) — ~~A bad conduct discharge shall not be adjudged unless a complete record of the~~
- 25 ~~proceedings and testimony before the court has been made, and counsel qualified~~
- 26 ~~pursuant to KRS 35.130 was detailed to represent the accused}.~~

27 ➔ Section 24. KRS 35.105 is amended to read as follows:

1 (1) General courts-martial may be convened by:

2 (a)[(1)] The Governor;

3 (b)[(2)] The adjutant general; or

4 (c)[(3)] A general officer who is designated as a commander~~[When~~
5 ~~empowered by the Governor, any other commanding officer in any force of~~
6 ~~the National Guard or active militia, who is not an accuser].~~

7 (2) If any such commanding officer is an accuser, the court shall be convened by
8 superior competent authority and may in any case be convened by such superior
9 competent authority if considered desirable by that authority.

10 ➔Section 25. KRS 35.110 is amended to read as follows:

11 (1) Special courts-martial may be convened by:

12 (a) Any person who may convene a general court-martial;

13 (b) The commanding officer of a garrison, fort, post, camp, station, Air National
14 Guard base, or naval base or station~~[air base or other place where members~~
15 ~~of a force of the National Guard or active militia are on duty];~~

16 (c) The commanding officer of a~~[division,]~~ brigade, regiment, detached~~[or~~
17 ~~separate]~~ battalion,~~[wing, group, detached or separate squadron,]~~ or
18 corresponding unit of the Army~~[National Guard];~~

19 (d) The commanding officer of wing, group, separate squadron, or
20 corresponding unit of the Air Force~~[any separate or detached command or~~
21 ~~group of detached units of any of the forces of the National Guard or active~~
22 ~~militia placed under a single commander]; or~~

23 (e) The commanding officer or officer in charge of any other command, when
24 empowered by the adjutant general.

25 (2) If~~[When]~~ any such officer is an accuser, the court shall be convened by superior
26 competent authority, and may in any case be convened by that superior authority if
27 considered desirable by that~~[such]~~ authority~~[when deemed advisable by him].~~

→ Section 26. KRS 35.120 is amended to read as follows:

(1) Any commissioned officer of ~~or on duty with~~ the state military forces is ~~National Guard or active militia shall be~~ eligible to serve on all courts-martial for the trial of any person subject to this code ~~who may lawfully be brought before such courts for trial~~.

(2) Any warrant officer of ~~or on duty with~~ the state military forces is ~~National Guard or active militia shall be~~ eligible to serve on general and special courts-martial for the trial of any person subject to this code, other than a commissioned ~~an~~ officer ~~who may lawfully be brought before such courts for trial~~.

(3) ~~(a)~~ Any enlisted member of the state military forces ~~National Guard or active militia~~ who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member subject to this code, but that member ~~he~~ shall serve as a member of a court only if, before the conclusion of a session called by the military judge under KRS 35.195 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members ~~persons~~ serve on it. After such request the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third (1/3) of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be assembled ~~convened~~ and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

~~((b))~~ For the purposes of this section, the word "unit" means any regularly ~~shall mean a duly~~ organized body of the state military forces ~~National Guard or~~

1 ~~active militia~~ not larger than a company,~~[-or]~~ a squadron, a division of the
 2 naval militia, or a body corresponding to one of them.

3 (4)~~[-(a)]~~ When it can be avoided, no~~[-subject]~~ person subject to this code may~~[-shall]~~
 4 be tried by a court-martial any member of which is junior to the accused~~[him]~~ in
 5 rank or grade.

6 (5)~~[-(b)]~~ When convening a court-martial, the convening authority shall detail as
 7 members thereof such members of the state military forces~~[persons]~~ as, in the
 8 convening authority's~~[his]~~ opinion, are best qualified for the duty by reason of age,
 9 education, training, experience, length of service, and judicial temperament. No
 10 member of the state military forces is eligible to serve as a member of a general or
 11 special court-martial when that member~~[he]~~ is the accuser,~~[-or]~~ a witness~~[-for the~~
 12 ~~prosecution]~~, or has acted as investigating officer or as counsel in the same case.

13 ➔Section 27. KRS 35.125 is amended to read as follows:

14 (1) A military judge shall be detailed to each general and special court-martial. The
 15 military judge shall preside over each open session of the court-martial to which
 16 the military judge has been detailed.

17 (2) A military judge shall be:

18 (a) An active or retired commissioned officer of an organized state military
 19 force;

20 (b) A member in good standing of the bar of the highest court of a state or a
 21 member of the bar of a federal court for at least five (5) years; and

22 (c) Either:

23 1. A certified military judge; or

24 2. Certified as qualified for duty as a military judge by the senior force
 25 judge advocate which is the same force as the accused.

26 (3) In the instance when a military judge is not a member of the bar of the highest
 27 court of the state, the military judge shall be deemed admitted pro hac vice,

subject to filing a certificate with the senior force judge advocate which is the same force as the accused setting forth the qualifications provided in subsection (2) of this section.

(4) The military judge of a general or special court-martial shall be designated by the senior force judge advocate which is the same force as the accused, or a designee, for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance as a military judge.

(5) ~~[The authority convening a general or special court-martial shall request the state judge advocate to detail as military judge thereof a commissioned officer who is a member of the bar of the highest court of a state.] No person is eligible to act as military judge in a case if that person~~[he]~~ is the accuser,~~[or]~~ a witness~~[for the prosecution]~~, or has acted as investigating officer~~[,]~~ or a~~[as]~~ counsel in the same case.~~

~~(6)~~~~(2)~~ The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor~~[may he]~~ vote with the members of the court.

➔ Section 28. KRS 35.130 is amended to read as follows:

(1) (a) For each general and special court-martial the authority convening the court shall~~[request the state judge advocate to]~~ detail~~[a]~~ trial counsel,~~[and a]~~ defense counsel, and assistants as are~~[he considers]~~ appropriate.

(b) No person who has acted as investigating officer, military judge, or court member in any case may~~[shall]~~ act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may~~[shall]~~ act later in the same case for the defense, nor

1 ~~may~~[shall] any person who has acted for the defense act later in the same case
2 for the prosecution.

3 ~~(c)~~[(2)] Except as provided in subsection (2) of this section, trial counsel and
4 defense counsel detailed for a general and special court-martial must be a
5 judge advocate[shall be members of the bar of the highest court of the state].

6 (2) In the instance when a defense counsel is not a member of the bar of the highest
7 court of the state, the defense counsel shall be deemed admitted pro hac vice,
8 subject to filing a certificate with the military judge setting forth qualifications
9 that counsel is:

10 (a) A commissioned officer of the Armed Forces of the United States or a
11 component thereof; and

12 (b) A member in good standing of the bar of the highest court of a state; and

13 (c) Certified as a judge advocate in the Judge Advocate General's Corps of the
14 Army, Air Force, Navy, or the Marine Corps; or

15 (d) A judge advocate.

16 ➔Section 29. KRS 35.140 is amended to read as follows:

17 Under such regulations as may be prescribed[the adjutant general may prescribe], the
18 convening authority of a[for each] general or special court-martial or court of inquiry
19 shall detail or employ qualified court reporters, who shall record the proceedings of
20 and testimony taken before that court and may detail or employ interpreters[shall
21 cause a complete record to be kept of all proceedings and testimony before the court. A
22 competent court reporter shall be detailed to take a verbatim record of all general courts-
23 martial. A special court-martial may not adjudge a bad conduct discharge unless a
24 competent court reporter was detailed to take a verbatim record. The record of any other
25 court martial, military commission or court of inquiry may be taken by a court reporter, a
26 notary public, or other officer competent to swear witnesses and summarize testimony.
27 The convening authority may appoint an interpreter] who shall interpret for the court[or

1 commission}.

2 ➔Section 30. KRS 35.145 is amended to read as follows:

3 (1) No member of a general or special court-martial shall be absent or excused after the
 4 court has been assembled for the trial of the accused unless excused as a result of
 5 a challenge, excused by the military judge~~[has been arraigned except]~~ for physical
 6 disability or other~~[as a result of a challenge or by order of the convening authority~~
 7 ~~for]~~ good cause, or excused by order of the convening authority for good cause.

8 (2) Whenever a general court-martial, other than a general court-martial composed of
 9 a military judge only, is reduced below five (5) members, the trial may not proceed
 10 unless the convening authority details new members sufficient in number to
 11 provide not less than the applicable minimum number of five (5) members. The
 12 trial may proceed with the new members present after the recorded evidence
 13 previously introduced before the members of the court has been read to the court
 14 in the presence of the military judge, the accused, and counsel for both
 15 sides~~[specifically consented to by the accused and defense counsel. In such case a~~
 16 ~~new trial may be ordered by the convening authority].~~

17 (3) Whenever a special court-martial, other than a special court-martial composed of
 18 a military judge only, is reduced below three (3) members, the trial may not
 19 proceed unless the convening authority details new members sufficient in number
 20 to provide not less than three (3) members. The trial shall proceed with the new
 21 members present as if no evidence has been introduced previously at the trial,
 22 unless a verbatim record of the evidence previously introduced before the
 23 members of the court or a stipulation thereof is read to the court in the presence
 24 of the military judge, the accused, and counsel for both sides~~[specifically~~
 25 ~~consented to by the accused and defense counsel. In such case a new trial may be~~
 26 ~~ordered by the convening authority].~~

27 (4) If the military judge of a court-martial composed of a military judge only is

unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions in subsection (1)(b) or (2)(b) of Section 20 of this Act, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

➔ Section 31. KRS 35.150 is amended to read as follows:

(1) Charges and specifications shall be signed by a ~~a[subject]~~ person subject to this code under oath before a commissioned officer~~[person]~~ authorized by this chapter to administer oaths and shall state:

- (a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and
- (b) That they~~[the same]~~ are true in fact to the best of the signer's~~[his]~~ knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges~~[against him]~~ as soon as practicable.

➔ Section 32. KRS 35.155 is amended to read as follows:

- (1) No~~[subject]~~ person subject to this code may~~[shall]~~ compel any person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate him or her.
- (2) No~~[subject]~~ person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person~~[him]~~ of the nature of the accusation and advising that person~~[him]~~ that the person~~[he]~~ does not have to make any statement regarding the offense of which the

1 person~~[he]~~ is accused or suspected, and that any statement made by the person~~[~~
 2 ~~him]~~ may be used as evidence against the person~~[him]~~ in a trial by court-martial~~],~~
 3 ~~that he has a right to consult with a lawyer, that he has a right to have a lawyer~~
 4 ~~present during questioning, that he has a right to request a lawyer and that upon his~~
 5 ~~request one (1) will be provided him without cost or, if he prefers, he may retain~~
 6 ~~counsel of his choice at his own expense].~~

7 (3) No~~[subject]~~ person subject to this code may~~[shall]~~ compel any person to make a
 8 statement or produce evidence before any military court~~[tribunal]~~ if the statement or
 9 evidence is not material to the issue and may tend to degrade the person~~[him]~~.

10 (4) No statement obtained from any person in violation of this section, or through the
 11 use of coercion, unlawful influence, or unlawful inducement shall be received in
 12 evidence against the person~~[him]~~ in a trial by court-martial.

13 ~~[(5) The requirements of this section are binding on all persons administering this code~~
 14 ~~but failure to follow them does not divest a military court of jurisdiction.]~~

15 ➔Section 33. KRS 35.160 is amended to read as follows:

16 (1) No charge or specification shall be referred to a general court-martial for trial until a
 17 thorough and impartial investigation of all the matters set forth therein has been
 18 made. This investigation shall include inquiry~~[inquiries]~~ as to the truth of the matter
 19 set forth in the charges, consideration of the form of charges, and a
 20 recommendation as to the disposition which should be made of the case in the
 21 interest of justice and discipline.

22 (2) The accused shall be advised of the charges against the accused and of the~~[him and~~
 23 ~~of his]~~ right to be represented at that investigation by counsel~~[at such~~
 24 ~~investigation].~~ The accused has the right to be represented at that investigation as
 25 provided in Section 39 of this Act and in regulations prescribed under that
 26 section~~[Upon his own request he shall be represented by civilian counsel if~~
 27 ~~provided by him, or military counsel of his own selection if such counsel be~~

reasonably available, or by counsel detailed by the state judge advocate]. At ~~that~~^[such] investigation full opportunity shall be given to the accused to cross-examine witnesses against ~~the accused~~^[him] if they are available and to present anything ~~the accused~~^[he] may desire in ~~the accused's~~^[his] own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted ~~before~~^[prior to the time] the accused is charged with the offense, and if the accused was present at ~~the~~^[such] investigation and afforded the opportunities for representation, cross-examination, and presentation as prescribed in subsection (2) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after ~~the accused~~^[he] is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in ~~the accused's~~^[his] own behalf.

(4) If evidence adduced in an investigation under this section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused is:

(a) Present at the investigation;

(b) Informed of the nature of each uncharged offense investigated; and

(c) Afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) of this section.

(5) The requirements of this section ~~are~~^[shall be] binding on all persons administering this code, but failure to follow them does not constitute jurisdictional error~~in any~~

ease shall not divest a military court of jurisdiction}.

➔ Section 34. KRS 35.165 is amended to read as follows:

When a person is held for trial by general court-martial, the commanding officer shall, within eight (8) days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person~~[officer]~~ exercising general court-martial jurisdiction. If that~~[the same]~~ is not practicable, the commanding officer~~[he]~~ shall report in writing to that person~~[such officer]~~ the reasons for delay.

➔ Section 35. KRS 35.170 is amended to read as follows:

(1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to a~~[the state]~~ judge advocate~~[or his staff judge advocate, as may be appropriate,]~~ for consideration and advice. The convening authority may~~[shall]~~ not refer a specification under a charge to a general court-martial for trial unless the convening authority has been advised in writing by a judge advocate that:

(a) The specification alleges an offense under this code;

(b) The specification~~[he has found that the charge alleges an offense under this code and]~~ is warranted by evidence indicated in the report of investigation under Section 33 of this Act, if there is a report; and

(c) A court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the judge advocate under subsection (1) of this section with respect to a specification under a charge shall include a written and signed statement by the judge advocate:

(a) Expressing conclusions with respect to each matter set forth in subsection (1) of this section; and

(b) Recommending action that the convening authority take regarding the specification.

1 *If the specification is referred for trial, the recommendation of the judge advocate*
 2 *shall accompany the specification.*

3 ~~(3)~~~~(2)~~ If the charges or specifications are not formally correct or do not conform to
 4 the substance of the evidence contained in the report of the investigating officer,
 5 formal corrections and such changes in the charges and specifications as are needed
 6 to make them conform to the evidence may be made.

7 ➔ Section 36. KRS 35.175 is amended to read as follows:

8 The trial counsel *shall serve or*~~[to whom court-martial charges are referred for trial shall]~~
 9 cause to be served upon the accused a copy of the charges~~[upon which trial is to be had]~~.
 10 No person *may*~~[shall]~~, against *the person's*~~[his]~~ objection, be brought to trial before a
 11 general court-martial *case* within a period of five (5) days *after*~~[subsequent to]~~ the service
 12 off~~[the]~~ charges upon *the person*~~[him]~~, or *in*~~[before]~~ a special court-martial, within a
 13 period of three (3) days *after*~~[subsequent to]~~ the service of the charges upon *the*
 14 *accused*~~[him]~~.

15 ➔ Section 37. KRS 35.180 is amended to read as follows:

16 *Pretrial, trial, and post-trial procedures*~~[The procedure]~~, including modes of proof,
 17 *for*~~[in cases before]~~ courts-martial *cases arising under this code, and for*~~[]~~ courts of
 18 inquiry, *may*~~[military commissions, and other military tribunals shall]~~ be prescribed by
 19 the Governor *or adjutant general* by regulations, *or as otherwise provided by law, which*
 20 *shall apply*~~[issued pursuant to this chapter which shall, so far as he deems practicable,~~
 21 ~~apply the forms and modes of procedure,]~~ the principles of law and the rules of evidence
 22 generally recognized in *military criminal cases*~~[the trial of cases]~~ in the courts *of the*
 23 *Armed Forces but which may*~~[martial of the United States, but which shall]~~ not be
 24 contrary to or inconsistent with this code.

25 ➔ Section 38. KRS 35.185 is amended to read as follows:

26 (1) No authority convening a general *or*~~[]~~ special~~[or summary]~~ court-martial, nor any
 27 other commanding officer, or officer serving on the staff thereof, *may*~~[shall]~~

1 censure, reprimand, or admonish the court or any member, military judge, or
 2 counsel thereof, with respect to the findings or sentence adjudged by the court, or
 3 with respect to any other exercise of its or their[his] functions in the conduct of the
 4 proceeding. No person subject to this code may[shall] attempt to coerce or, by
 5 unauthorized means, influence the action of a court-martial or court of inquiry[any
 6 other military tribunal] or any member thereof in reaching the findings or sentence
 7 in any case, or the action of any convening, approving or reviewing authority with
 8 respect to their[his] judicial acts. The foregoing provisions shall not apply to:

- 9 (a) General instructional or informational courses in military justice, if such
- 10 courses are designed solely for the purpose of instructing members of a
- 11 command in the substantive and procedural aspects of courts-martial; or
- 12 (b) Statements and instructions given in open court by the military judge or
- 13 counsel.

14 (2) In the preparation of an effectiveness, fitness, or efficiency report, or any other
 15 report or document used in whole or in part for the purpose of determining whether
 16 a member of the state military forces[National Guard or active militia] is qualified
 17 to be advanced in grade or in determining the assignment or transfer of a member of
 18 the state military forces[National Guard or active militia] or in determining whether
 19 a member of the state military forces[National Guard or active militia] should be
 20 retained on active status[duty], no person subject to this code may in preparing any
 21 such report:

- 22 (a) Consider or evaluate the performance of duty of any such member as a
- 23 member[, military judge or trial counsel] of a court-martial or witness therein;
- 24 or
- 25 (b) Give a less favorable rating or evaluation of any[member of the National
- 26 Guard or active militia because of the zeal with which such member as]
- 27 counsel of the[represented any] accused because of zealous representation

before a court-martial.~~[This subsection is not applicable to evaluations made
by the state judge advocate of the performance of personnel under his
supervision.]~~

➔ Section 39. KRS 35.190 is amended to read as follows:

(1) The trial counsel of a general or special court-martial shall *be a member in good standing of the state bar and shall* prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) (a) The accused *has*~~[shall have]~~ the right to be represented in~~[his]~~ defense before a general or special court-martial *under Section 33 of this Act as provided in this subsection.*

(b) *The accused may be represented* by civilian counsel *at the provision and expense of the accused.*

(c) *The accused may be represented:*

1. ~~[if provided by him, or]~~By military counsel *detailed under Section 23 of this Act; or*

2. *By military counsel* of *the accused's*~~[his]~~ own selection if *that counsel is* reasonably available *as determined under paragraph (g) of this subsection.*

(d) *If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (c) of this subsection shall*~~[, or by the defense counsel duly appointed pursuant to KRS 35.130. If the accused has counsel of his own selection the duly appointed defense counsel, and assistant defense counsel, if any, shall, if the accused so desires,] act as his associate counsel~~
unless excused at the request of the accused~~[; otherwise they shall be excused by the military judge].~~

(e) *Except as provided under paragraph (f) of this subsection, if the accused is represented by military counsel of his own selection under paragraph (c)2.*

of this subsection, any military counsel detailed under paragraph (c)1. of this subsection shall be excused.

(f) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under Section 28 of this Act to detail counsel, in that person's sole discretion:

1. May detail additional military counsel as assistant defense counsel;

and

2. If the accused is represented by military counsel of the accused's own selection under paragraph (c)2. of this subsection, may approve a request from the accused that military counsel detailed under paragraph (c)1. of this subsection act as associate defense counsel.

(g) The senior force judge advocate of the same force of which the accused is a member, shall determine whether the military counsel selected by an accused is reasonably available.

(3) In ~~any~~[every] court-martial proceeding resulting in a conviction, the defense counsel may:

(a) ~~[, in the event of conviction,]~~Forward for attachment to the record of proceedings a brief of such matters as counsel determines~~[he feels]~~ should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel~~[he]~~ may deem appropriate;

(b) Assist the accused in the submission of any matter under Section 65 of this Act; and

(c) Take other action authorized by this code.

~~[(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel, or when he is qualified to be a trial counsel as required by KRS 35.130, perform any duty imposed by law, regulation, or the custom of the service~~

1 ~~upon the trial counsel of the court. An assistant trial counsel of a special court-~~
 2 ~~martial may perform any duty of the trial counsel.~~

3 ~~(5) An assistant defense counsel of a general or special court-martial may, under the~~
 4 ~~direction of the defense counsel, or when he is qualified to be the defense counsel as~~
 5 ~~required by KRS 35.130, perform any duty which, by law, regulation, or the custom~~
 6 ~~of the service, is placed upon counsel for the accused.}~~

7 ➔ Section 40. KRS 35.195 is amended to read as follows:

8 (1) At any time after the service of charges which have been referred for trial to a court-
 9 martial composed of a military judge and members, the military judge may, subject
 10 to Section 36 of this Act, call the court into session without the presence of the
 11 members for the purpose of:

12 (a) Hearing and determining motions raising defenses or objections which are
 13 capable of determination without trial of the issues raised by a plea of not
 14 guilty;~~{or}~~

15 (b) Hearing and ruling upon any matter which may be ruled upon by the military
 16 judge under this code whether or not the matter is appropriate for later
 17 consideration or decision by the members of the court;~~{or}~~

18 (c) ~~{If permitted by the regulations of the Governor}~~ Holding the arraignment and
 19 receiving the pleas of the accused; and

20 (d) Performing any other procedural function which~~{ may be performed by the~~
 21 ~~military judge under KRS 35.180 which}~~ does not require the presence of the
 22 members of the court under this code. These proceedings shall be conducted
 23 in the presence of the accused, defense counsel, and trial counsel and shall be
 24 made part of the record.

25 These proceedings may be conducted notwithstanding the number of court members
 26 and without regard to Section 30 of this Act.

27 (2) When the members of a court-martial deliberate or vote~~{Whenever a general or~~

1 ~~special court martial deliberates or votes~~], only the members~~[of the court]~~ may be
 2 present. All other proceedings, including any consultation of the members of the
 3 court with counsel or the military judge shall be made part of the record and shall be
 4 in the presence of the accused, the defense counsel, the trial counsel, and the
 5 military judge.

6 ➔ Section 41. KRS 35.200 is amended to read as follows:

7 The military judge ~~offer~~ a court-martial~~[without a military judge]~~ may, for reasonable
 8 cause, grant a continuance to any party for such time and as often as appears to be just.

9 ➔ Section 42. KRS 35.205 is amended to read as follows:

10 (1) (a) The military judge and members of a general or special court-martial may be
 11 challenged by the accused or the trial counsel for cause stated to the court. The
 12 military judge or the court shall determine the relevancy and validity of
 13 challenges for cause, and ~~may~~~~[shall]~~ not receive a challenge to more than one
 14 (1) person at a time. Challenges by the trial counsel shall ordinarily be
 15 presented and decided before those by the accused are offered.

16 (b) If the exercise of a challenge for cause reduces the court below the
 17 minimum number of members required by Section 20 of this Act, all parties
 18 shall, notwithstanding Section 30 of this Act, either exercise or waive any
 19 challenge for cause then apparent against the remaining members of the
 20 court before additional members are detailed by the court. However,
 21 peremptory challenges shall not be exercised at that time.

22 (2) (a) Each accused and trial counsel is entitled to one (1) peremptory challenge of
 23 members of the court. The~~[, but the]~~ military judge may not be challenged
 24 except for cause.

25 (b) If the exercise of a peremptory challenge reduces the court below the
 26 minimum number of members required by Section 20 of this Act, the parties
 27 shall, notwithstanding Section 30 of this Act, either exercise or waive any

remaining peremptory challenge not previously waived against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one (1) peremptory challenge against members not previously subject to peremptory challenge.

➔ Section 43. KRS 35.210 is amended to read as follows:

- (1) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters and interpreters~~[The military judge, all interpreters, and, in general and special courts-martial, the members, the trial counsel, assistant trial counsel, the defense counsel, assistant defense counsel, and the reporter]~~ shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

The form of the oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

- (2) Each witness~~[All witnesses]~~ before a court-martial~~[courts-martial]~~ shall be examined on oath or affirmation.

→ Section 44. KRS 35.215 is amended to read as follows:

(1) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under KRS 35.070 if the offense was committed more than three (3)~~[two (2)]~~ years before the receipt of sworn charges and specifications by an officer exercising~~[summary]~~ court-martial jurisdiction over the command or before the imposition of punishment under KRS 35.070.~~[Notwithstanding the foregoing, a prosecution for larceny and wrongful appropriation under KRS 35.670 against one who obtained the property lawfully and subsequently misappropriated it may be commenced within one (1) year after discovery of the loss, but in no case shall this extend the time limitation by more than five (5) years.]~~

(2) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this article.

(3) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

(4) When the United States is at war, the running of any statute of limitations applicable to any offense under this code:

(a) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;

(b) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state; or

(c) Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order

which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency;

is suspended until two (2) years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(5) "War," as used in subsection (4) of this section, means a period of war declared by Congress or the factual determination by the President that the existence of hostilities warrants a finding that a time of war exists.

(6) (a) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

1. Has expired; or

2. Will expire within one hundred eighty (180) days after the date of dismissal of the charges and specifications;

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (b) of this subsection are met.

(b) The conditions referred to in paragraph (a) of this subsection are that the new charges and specifications must:

1. Be received by a commander within one hundred eighty (180) days after the dismissal of the charges or specifications; and

2. Allege the acts or omissions that were alleged in the dismissed charges or specifications.

➔ Section 45. KRS 35.220 is amended to read as follows:

(1) No person may, without his consent,~~[shall]~~ be tried a second time~~[by a court of the state]~~ for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification ~~is~~~~[shall be held to be]~~ a trial in the sense of this section

1 until the finding of guilty has become final after review of the case has been fully
2 completed.

3 (3) A proceeding which, after~~[subsequent to]~~ the introduction of evidence but
4 before~~[prior to]~~ a finding, is dismissed or terminated by the convening authority or
5 on motion of the prosecution for failure of available evidence or witnesses without
6 any fault of the accused shall be a trial in the sense of this section.

7 ➔Section 46. KRS 35.225 is amended to read as follows:

8 (1) If an accused after arraignment~~[arraigned before a court-martial]~~ makes any
9 irregular pleading, or, after a plea of guilty, sets up matter inconsistent with the plea,
10 or if it appears that the accused~~[he]~~ has entered the plea of guilty improvidently or
11 through lack of understanding of its meaning and effect, or if the accused~~[he]~~ fails
12 or refuses to plead, a plea of not guilty shall be entered in the record and the court
13 shall proceed as though he had pleaded not guilty.

14 (2) With respect to any charge or specification to which a plea of guilty has been made
15 by the accused and accepted by the military judge or by a court-martial without a
16 military judge, a finding of guilty of the charge or specification may~~[, if permitted~~
17 ~~by the regulations of the Governor,]~~ be entered immediately without vote. This
18 finding shall constitute the finding of the court unless the plea of guilty is
19 withdrawn prior to the announcement of the sentence, in which event the
20 proceedings shall continue as though the accused had pleaded not guilty.

21 ➔Section 47. KRS 35.230 is amended to read as follows:

22 ~~[(1)]~~The trial counsel, defense counsel, and the court-martial shall have equal
23 opportunity to obtain witnesses and other evidence as prescribed by~~[in accordance with]~~
24 regulations and provided by law. Process issued in court-martial cases to compel
25 witness to appear and testify and to compel the production of other evidence shall apply
26 the principles of law and the rules of courts-martial generally recognized in military
27 criminal cases in the courts of the Armed Forces of the United States, but which may

not be contrary to or inconsistent with this code. Process shall run to any part of the United States, or the Territories, Commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States~~issued by the Governor pursuant to this chapter.~~

~~(2) The military judge of a court-martial or a summary court officer may:~~

~~(a) Issue a warrant for the arrest of any accused person, who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;~~

~~(b) Issue subpoenas duces tecum and other subpoenas;~~

~~(c) Enforce by attachment the attendance of witnesses and the production of books and papers}.~~

➔ Section 48. KRS 35.235 is amended to read as follows:

(1) ~~Any[Every] person not subject to this code, who[, after the following two (2) provisions have been complied with, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which such person may have been duly subpoenaed to produce, shall be deemed guilty of an offense against the state]:~~

~~(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a[any] court-martial[, military commission] or court of inquiry, or before any military or civil officer designated to take a deposition to be read in evidence before such a[court-martial, commission or]court[of inquiry];~~
~~{and}~~

~~(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court[Circuit Court] of the state;~~
~~and~~

~~(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or~~

1 to testify or to produce any evidence which that person may have been
 2 legally subpoenaed to produce;

3 May be punished by the military court in the same manner as a criminal court of
 4 the state.

- 5 (2) The fees and mileage of witnesses shall be advanced or paid out of the
 6 appropriations for the compensation of witnesses~~[Upon the certification of the~~
 7 ~~facts under subsection (1) by the military court or tribunal to the Commonwealth's~~
 8 ~~attorney of the county where the offense occurred, the Commonwealth's attorney~~
 9 ~~shall prosecute the accused in Circuit Court and jurisdiction is hereby conferred~~
 10 ~~upon such courts for this purpose. If convicted, the person may be fined not more~~
 11 ~~than two hundred fifty dollars (\$250) or imprisoned not more than thirty (30) days~~
 12 ~~or both].~~

13 ➔ Section 49. KRS 35.240 is amended to read as follows:

- 14 (1) A military judge~~[court]~~ may punish for contempt any person~~[subject to this code]~~
 15 who uses any disrespectful word, sign, or gesture~~[words, signs, or gestures]~~ in its
 16 presence, or who disturbs its proceedings by any riot or disorder.

- 17 (2) A person subject to this code may be punished for contempt by confinement not to
 18 exceed thirty (30) days or a fine of one hundred dollars (\$100), or both.

- 19 (3) Any person not subject to this code~~[who engages in conduct described in~~
 20 ~~subsection (1) of this section]~~ may be punished for contempt by a military court in
 21 the same manner as a criminal court of the state~~[fined not more than two hundred~~
 22 ~~and fifty dollars (\$250) or imprisoned not more than thirty (30) days or both. Upon~~
 23 ~~certification of the facts by the military court or tribunal to the Commonwealth's~~
 24 ~~attorney of the county where the offense occurred, the Commonwealth's attorney~~
 25 ~~shall prosecute the accused in Circuit Court and jurisdiction is hereby conferred~~
 26 ~~upon such courts for this purpose].~~

27 ➔ Section 50. KRS 35.245 is amended to read as follows:

1 (1) At any time after charges have been signed as provided in KRS 35.150, any party
 2 may take oral or written depositions unless the military judge hearing the case, or,
 3 if the case is not being heard, an authority competent to convene a court-martial
 4 for the trial of those charges forbids it for good cause. ~~[If a deposition is to be~~
 5 ~~taken before charges are referred for trial, the trial authority may designate officers~~
 6 ~~to represent the prosecution and the defense and may authorize such officers to take~~
 7 ~~the depositions of any witness.]~~

8 (2) The party at whose instance a deposition is to be taken shall give to every other
 9 party reasonable written notice of the time and place for taking the deposition.

10 (3) Depositions may be taken before and authenticated by any military or civil officer
 11 authorized by the laws of the state or by the laws of the place where the deposition
 12 is taken to administer oaths.

13 (4) A duly authenticated deposition taken upon reasonable notice to the other
 14 parties~~[party]~~, so far as otherwise admissible under the rules of evidence, may be
 15 read in evidence or, in the case of audiotape, videotape, digital image or file, or
 16 similar material, may be placed in evidence before any~~[court-martial,]~~ military~~{~~
 17 ~~commission or in any proceeding before a]~~ court~~[of inquiry]~~, if it appears:

18 (a) That the witness resides or is beyond the state in which the~~[court-martial,~~
 19 ~~military commission or]~~ court~~[of inquiry]~~ is ordered to sit, or beyond~~[the~~
 20 ~~distance of]~~ one hundred (100) miles from the place of trial or hearing;

21 (b) That the witness, by reason of death, age, sickness, bodily infirmity,
 22 imprisonment, military necessity, nonamenability to process, or other
 23 reasonable cause, is unable or refuses to appear and testify in person at the
 24 place of trial or hearing; or

25 (c) That the present whereabouts of the witness is unknown.

26 ➔ Section 51. KRS 35.250 is amended to read as follows:

27 (1) In any case not extending to the dismissal of a commissioned officer, the sworn

testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(2) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Such testimony may also be read in evidence before a court of inquiry~~[Records of courts of inquiry are not admissible as evidence in any court-martial].~~

➔ SECTION 52. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(2) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused:

(a) Guilty;

(b) Not guilty; or

(c) Not guilty only by reason of lack of mental responsibility.

(4) Subsection (3) of this section does not apply to a court-martial composed of a

1 military judge only. In the case of a court-martial composed of a military judge
 2 only, whenever lack of mental responsibility of the accused with respect to an
 3 offense is properly at issue, the military judge shall find the accused:

4 (a) Guilty;

5 (b) Not guilty; or

6 (c) Not guilty only by reason of lack of mental responsibility.

7 (5) Notwithstanding the provisions of Section 54 of this Act, the accused shall be
 8 found not guilty only by reason of lack of mental responsibility if:

9 (a) A majority of the members of the court-martial present at the time the vote
 10 is taken determines that the defense of lack of mental responsibility has
 11 been established; or

12 (b) In the case of a court-martial composed of a military judge only, the
 13 military judge determines that the defense of lack of mental responsibility
 14 has been established.

15 ➔Section 53. KRS 35.255 is amended to read as follows:

16 (1) Voting by members of a general or special court-martial~~[upon questions of~~
 17 ~~challenge,]~~ on the findings~~[,]~~ and on the sentence~~[,]~~ shall be by secret written ballot.

18 The junior member of the court shall~~[in each case]~~ count the votes. The~~[, which]~~
 19 count shall be checked by the president, who shall forthwith announce the result of
 20 the ballot to the members of the court.

21 (2) The military judge~~[of a general or special court-martial]~~ shall rule upon all
 22 questions of law and interlocutory questions~~[, other than challenge,]~~ arising during
 23 the proceedings. Any such ruling made by the military judge upon any question of
 24 law or any interlocutory question other than the factual issue of mental
 25 responsibility of the accused is final and constitutes~~[a motion for a finding of not~~
 26 ~~guilty, or the question of accused's sanity, shall be final and shall constitute]~~ the
 27 ruling of the court. However~~[, but]~~ the military judge may change the~~[any such]~~

1 ruling at any time during the trial. Unless ~~the~~^{such} ruling ~~is~~^{be} final, if any
 2 member objects thereto, the court shall be cleared and closed and the question
 3 decided by a voice vote as provided in KRS 35.260~~[viva voce]~~, beginning with the
 4 junior in rank.

5 (3) Before a vote is taken on the findings, the military judge shall, in the presence of the
 6 accused and counsel, instruct the members of the court as to the elements of the
 7 offense and charge them~~[the court as follows]~~:

8 (a) That the accused must be presumed to be innocent until his guilt is established
 9 by legal and competent evidence beyond reasonable doubt;

10 (b) That in the case being considered, if there is a reasonable doubt as to the guilt
 11 of the accused, the doubt shall be resolved in favor of the accused and he shall
 12 be acquitted;

13 (c) That if there is a reasonable doubt as to the degree of guilt, the finding must
 14 be in a lower degree as to which there is no reasonable doubt; and

15 (d) That the burden of proof to establish the guilt of the accused beyond
 16 reasonable doubt is upon the state.

17 (4) Subsections (1), (2) and (3) of this section do not apply to a court-martial composed
 18 of a military judge only. The military judge of such a court-martial shall determine
 19 all questions of law and fact~~[finding]~~ arising during the proceedings and, if the
 20 accused is convicted, adjudge an appropriate sentence. The military judge of such a
 21 court-martial shall make a general finding and shall in addition on request find the
 22 facts specially. If an opinion or memorandum decision is filed, it will be sufficient if
 23 the findings of fact appear therein.

24 ➔Section 54. KRS 35.260 is amended to read as follows:

25 (1) No person may~~[shall]~~ be convicted of an~~[any]~~ offense except as provided in
 26 subsection (2) of Section 46 of this Act or by the~~[by the unanimous]~~ concurrence of
 27 two-thirds (2/3) of the members present at the time the vote is taken.

1 (2) ~~[All sentences shall be determined by the unanimous concurrence of the members~~
 2 ~~present at the time the vote is taken.~~

3 ~~(3) —~~ All other questions to be decided by the members of a general or special court-
 4 martial shall be determined by a majority vote, but a determination to reconsider a
 5 finding of guilty or to reconsider a sentence, with a view toward decreasing it,
 6 may be made by any lesser vote which indicates that the reconsideration is not
 7 opposed by the number of votes required for that finding or sentence. A tie vote
 8 on a challenge disqualifies ~~[shall disqualify]~~ the member challenged. A tie vote on a
 9 motion ~~[for a finding of not guilty or on a motion]~~ relating to the question of the
 10 accused's sanity is ~~[shall be]~~ a determination against the accused. A tie vote on any
 11 other question shall be a determination in favor of the accused.

12 ➔ Section 55. KRS 35.265 is amended to read as follows:

13 A ~~[Every]~~ court-martial shall announce its findings and sentence to the parties as soon as
 14 determined.

15 ➔ Section 56. KRS 35.270 is amended to read as follows:

16 (1) Each general and special court-martial shall keep a separate record of the
 17 proceedings in each case before it, and the record shall be ~~[Upon request of the~~
 18 ~~accused or a reviewing authority, or the state judge advocate, the record of a general~~
 19 ~~or special court martial shall be transcribed and]~~ authenticated by the signature
 20 of ~~[president and]~~ the military judge. If the record cannot be authenticated by ~~[either~~
 21 ~~the president or]~~ the military judge by reason of his death, disability or absence, it
 22 shall be authenticated by the signature of the trial counsel or by that of a member,
 23 if the trial counsel is unable to authenticate it by reason of his or her death,
 24 disability, or absence. In a court-martial consisting of only a military judge, the
 25 record shall be authenticated by the court reporter under the same conditions
 26 which would impose such a duty on a member under this subsection ~~[signed by a~~
 27 ~~member in lieu of him. If both the president and the military judge are unavailable,~~

the record shall be authenticated by two (2) members. In all other courts-martial, records of trial shall contain such matter and be authenticated in such manner as the Governor by regulation prescribes].

(2) (a) A complete verbatim[copy of the] record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction; and

(b) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations.

(3) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated[shall be given to the accused as soon as it is authenticated].

➔ Section 57. KRS 35.275 is amended to read as follows:

[(1) The punishment which a court-martial may direct for an offense shall not exceed the limits prescribed by this code.

(2)]Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may[, shall] not be adjudged by a[any] court-martial or inflicted upon any[subject] person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

➔ SECTION 58. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) The punishment which a court-martial may direct for an offense may not exceed such limits as prescribed by this code, but in no instance may a sentence exceed more than ten (10) years for a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one (1) year is a felony offense. All other military offenses are misdemeanors.

(2) The limits of punishment for violations of the punitive articles prescribed in this

code shall be lesser of the sentences prescribed by the manual for courts-martial of the United States in effect on January 1, 2004, and the state manual for courts-martial, but in no instance shall any punishment exceed that authorized by this code.

➔ Section 59. KRS 35.280 is amended to read as follows:

(1) Whenever a sentence of a court-martial, as lawfully adjudged and approved, includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date ~~the~~^[such] sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(2) Any period of confinement included in a sentence of a court-martial ~~begins~~^[shall begin] to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) All other sentences of courts-martial are~~[court-martial shall become]~~ effective on the date ordered executed.~~[In no case may a sentence be executed until final action is taken on review.]~~

➔ SECTION 60. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in that person's sole discretion defer service of the sentence of confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-

1 martial jurisdiction over the command to which the accused is currently
 2 assigned.

3 (2) (a) In any case in which a court-martial sentences an accused referred to in
 4 paragraph (b) of this subsection to confinement, the convening authority
 5 may defer the service of the sentence to confinement, without the consent of
 6 the accused, until after the accused has been permanently released to the
 7 state military forces by a state, the United States, or a foreign country
 8 referred to in paragraph (b) of this subsection.

9 (b) Paragraph (a) of this subsection applies to a person subject to this code
 10 who:

- 11 1. While in the custody of a state, the United States, or a foreign country
 12 is temporarily returned by that state, the United States, or a foreign
 13 country to the state military forces for trial by court-martial; and
- 14 2. After the court-martial, is returned to that state, the United States, or a
 15 foreign country under the authority of an agreement or treaty, as the
 16 case may be.

17 (c) In this subsection, the term "state" includes the District of Columbia and
 18 any commonwealth, territory, or possession of the United States.

19 (3) In any case in which a court-martial sentences an accused to confinement and
 20 the sentence to confinement has been ordered executed, but in which review of
 21 the case under Section 71 of this Act is pending, the adjutant general may defer
 22 further service of the sentence to confinement while that review is pending.

23 ➔ Section 61. KRS 35.285 is amended to read as follows:

- 24 (1) A sentence of confinement adjudged by a court-martial, whether or not the
 25 sentence includes discharge or dismissal, and whether or not the discharge or
 26 dismissal has been executed,~~[military court]~~ may be carried into execution by
 27 confinement in any place authorized by this code. Persons so confined are~~of~~

1 ~~confinement under the control of the National Guard or active militia, or in any jail,~~
 2 ~~penitentiary or prison designated for that purpose as prescribed in KRS 35.055; and~~
 3 ~~persons so confined in such a jail, penitentiary or prison shall be}~~ subject to the
 4 same discipline and treatment as persons regularly confined or committed to that
 5 place~~[such jail, penitentiary or prison by the courts of the state].~~

6 (2) ~~[The omission of the words "hard labor" in any sentence of a court martial~~
 7 ~~adjudging confinement shall not be construed as depriving the authority executing~~
 8 ~~such sentence of the power to require hard labor as a part of the punishment.~~

9 (3) ~~The jailers, officers and wardens of all jails, penitentiaries or prisons designated~~
 10 ~~pursuant to KRS 35.055 shall receive the bodies of persons ordered into~~
 11 ~~confinement prior to trial and of persons committed to confinement by the process~~
 12 ~~or mandate of a military court and shall confine them according to law, and]No~~
 13 place of confinement may~~[such jailer, officer or warden shall demand or]~~ require
 14 payment of any fee or charge~~[of any nature]~~ for receiving or confining a person
 15 except as otherwise provided by law~~[in such jail, penitentiary or prison].~~

16 ➔SECTION 62. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) A court-martial sentence of an enlisted member in a pay grade above E-1, as
 19 approved by the convening authority, shall reduce that member to pay grade E-1,
 20 effective on the date of that approval, when it includes:

21 (a) A dishonorable or bad-conduct discharge; or

22 (b) Confinement.

23 (2) If the sentence of a member who is reduced in pay grade under subsection (1) of
 24 this section is set aside or disapproved, or, as finally approved, does not include
 25 any punishment named in subsection (1)(a) or (b) of this section, the rights and
 26 privileges of which the person was deprived because of that reduction shall be
 27 restored, including pay and allowances.

➔SECTION 63. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
READ AS FOLLOWS:

(1) (a) A court-martial sentence described in paragraph (b) of this subsection shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this article shall take effect on the date determined under Section 60 of this Act and may be deferred as provided by that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during that period and, in the case of a special court-martial, shall be two-thirds(2/3) of all pay due that member during that period.

(b) A sentence covered by this section is any sentence that includes:

1. Confinement for more than six (6) months; or

2. Confinement for six (6) months or less and a dishonorable or bad-conduct discharge or dismissal.

(2) In a case involving an accused who has dependents, the convening authority or other person acting under Section 65 of this Act may waive any or all of the forfeitures of pay and allowances required by subsection (1) of this section for a period not to exceed six (6) months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(3) If the sentence of a member who forfeits pay and allowances under subsection (1) of this section is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (1)(b) of this section, the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

➔Section 64. KRS 35.325 is amended to read as follows:

(1) A finding or sentence of a court-martial ~~may~~^[shall] not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

➔SECTION 65. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(2) (a) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Such a submission shall be made within ten (10) days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of a judge advocate under subsection (4) of this section.

(b) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (a) of this subsection for not more than an additional twenty (20) days.

(c) The accused may waive the right to make a submission to the convening authority under paragraph (a) of this subsection. A waiver must be made in writing and may not be revoked. For the purposes of subsection (3)(b) of this section, the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission

1 of a waiver to the convening authority.

2 (3) (a) The authority under this section to modify the findings and sentence of a
3 court-martial is a matter of command prerogative involving the sole
4 discretion of the convening authority. If it is impractical for the convening
5 authority to act, the convening authority shall forward the case to a person
6 exercising general court-martial jurisdiction who may take action under
7 this section.

8 (b) Action on the sentence of a court-martial shall be taken by the convening
9 authority or by another person authorized to act under this section. The
10 action may be taken only after consideration of any matters submitted by
11 the accused under subsection (2) of this section or after the time for
12 submitting such matters expires, whichever is earlier. The convening
13 authority or other person taking the action, in that person's sole discretion
14 may approve, disapprove, commute, or suspend the sentence in whole or in
15 part.

16 (c) Action on the findings of a court-martial by the convening authority or
17 other person acting on a sentence is not required. However, such person, in
18 the person's sole discretion may:

19 1. Dismiss any charge or specification by setting aside a finding of guilty
20 thereto; or

21 2. Change a finding of guilty to a charge or specification to a finding of
22 guilty to any offense that is a lesser included offense of the offense
23 stated in the charge or specification.

24 (4) Before acting under this section on any general or special court-martial case in
25 which there is a finding of guilty, the convening authority or other person taking
26 action under this section shall obtain and consider the written recommendation
27 of a judge advocate. The convening authority or other person taking action under

this section shall refer the record of trial to the judge advocate, and the judge advocate shall use that record in the preparation of the recommendation. The recommendation of the judge advocate shall include such matters as may be prescribed by regulation and shall be served on the accused, who may submit any matter in response under subsection (2) of this section. Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(5) (a) The convening authority or other person taking action under this section, in the person's sole discretion, may order a proceeding in revision or a rehearing.

(b) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the finding or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

1. Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;
2. Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or
3. Increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(c) A rehearing may be ordered by the convening authority or other person taking action under this article if that person disapproves the findings and sentence and states the reasons for disapproval of the findings. If that person disapproves the findings and sentence and does not order a rehearing, that person shall dismiss the charges. A rehearing as to the

findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

➔SECTION 66. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) In each case subject to appellate review under this code, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to an appeal. A withdrawal shall be signed by both the accused and his defense counsel and must be filed in accordance with appellate procedures as provided by law.

(2) The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by law.

➔SECTION 67. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) (a) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial so long as it is not made in reconsideration:

1. An order or ruling of the military judge which terminates the proceedings with respect to the charge or specification;

2. An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding;

3. An order or ruling which directs the disclosure of classified information;

4. An order or ruling which imposes sanctions for nondisclosure of classified information;

1 5. A refusal of the military judge to issue a protective order sought by the
 2 state to prevent the disclosure of classified information; and

3 6. A refusal by the military judge to enforce an order described in
 4 subparagraph 5. of this paragraph that has previously been issued by
 5 the appropriate authority.

6 (b) An appeal of an order or ruling may not be taken unless the trial counsel
 7 provides the military judge with written notice of appeal from the order or
 8 ruling within seventy-two (72) hours of the order or ruling. The notice shall
 9 include a certification by the trial counsel that the appeal is not taken for
 10 the purpose of delay and, if the order or ruling appealed is one which
 11 excludes evidence, that the evidence excluded is substantial proof of a fact
 12 material in the proceeding.

13 (c) An appeal under this section shall be diligently prosecuted as provided by
 14 law.

15 (2) An appeal under this section shall be forwarded to the court prescribed in Section
 16 71 of this Act. In ruling on an appeal under this section, that court may act only
 17 with respect to matters of law.

18 (3) Any period of delay resulting from an appeal under this section shall be excluded
 19 in deciding any issue regarding denial of a speedy trial unless an appropriate
 20 authority determines that the appeal was filed solely for the purpose of delay with
 21 the knowledge that it was totally frivolous and without merit.

22 ➔Section 68. KRS 35.310 is repealed, reenacted as a new section of KRS Chapter
 23 35, and amended to read as follows:

24 Each rehearing under this code shall take place before a court-martial composed of
 25 members who were not members of the court-martial which first heard the case.

26 ~~{(1) If the convening authority disapproves the findings and sentence of a court martial~~
 27 ~~he may, except where there is lack of sufficient evidence in the record to support the~~

findings, order a rehearing, in which case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2) ~~Every rehearing shall take place before a court-martial whose composition shall not include any member or military judge of the court-martial which first heard the case.] Upon a[such] rehearing the accused may[shall] not be tried for any offense of which the accused[he] was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved,[shall be imposed] unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.~~

➔ SECTION 69. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

(1) Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge advocate or designee may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be in writing and shall contain the following:

(a) Conclusions as to whether:

- 1 1. The court had jurisdiction over the accused and the offense;
- 2 2. The charge and specification stated an offense; and
- 3 3. The sentence was within the limits prescribed as a matter of law.
- 4 (b) A response to each allegation of error made in writing by the accused.
- 5 (c) If the case is sent for action under subsection (2) of this section, a
- 6 recommendation as to the appropriate action to be taken and an opinion as
- 7 to whether corrective action is required as a matter of law.
- 8 (2) The record of trial and related documents in each case reviewed under subsection
- 9 (1) of this section shall be sent for action to the adjutant general if:
- 10 (a) The judge advocate who reviewed the case recommends corrective action;
- 11 (b) The sentence approved under subsection (3) of Section 65 of this Act
- 12 extends to dismissal, a bad-conduct or dishonorable discharge, or
- 13 confinement for more than six (6) months; or
- 14 (c) Action is otherwise required by regulations of the adjutant general.
- 15 (3) (a) The adjutant general may:
- 16 1. Disapprove or approve the findings or sentence, in whole or in part;
- 17 2. Remit, commute, or suspend the sentence in whole or in part;
- 18 3. Except where the evidence was insufficient at the trial to support the
- 19 findings, order a rehearing on the findings, on the sentence, or on
- 20 both; or
- 21 4. Dismiss the charges.
- 22 (b) If a rehearing is ordered but the convening authority finds a rehearing
- 23 impracticable, the convening authority shall dismiss the charges.
- 24 (c) If the opinion of the senior force judge advocate, or designee, in the senior
- 25 force judge's review under subsection (1) of this section is that corrective
- 26 action is required as a matter of law and if the adjutant general does not
- 27 take action that is at least as favorable to the accused as that recommended

by the judge advocate, the record of trial and action thereon shall be sent to the Governor for review and action as deemed appropriate.

(4) The senior force judge advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be limited to questions of subject matter jurisdiction.

(5) The record of trial and related documents in each case reviewed under subsection (4) of this section shall be sent to the adjutant general. The adjutant general may:

(a) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the government, as the adjutant general deems appropriate; or

(b) Return the record of trial and related documents to the senior force judge advocate for appeal by the government as provided by law.

➔ Section 70. KRS 35.320 is repealed, reenacted as a new section of KRS Chapter 35, and amended to read as follows:

Except as otherwise required by this code, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulation and provided by

law[(1) — If the convening authority is the Governor, he shall refer the record of courts-martial to the state judge advocate who shall submit his written opinion to the Governor. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. After consideration of the opinion, the Governor's action on review of any record is final.

~~(2) (a) Except as provided in subsection (1) of this section, the convening authority may refer the record of a general court martial to the staff judge advocate~~

1 ~~designated by the state judge advocate who shall submit his written opinion to~~
2 ~~the convening authority. If the final action of the court has resulted in an~~
3 ~~acquittal of all charges and specifications, the opinion shall be limited to~~
4 ~~questions of jurisdiction. When the convening authority has taken final action~~
5 ~~he shall forward the entire record, including his action thereon and the opinion~~
6 ~~of the staff judge advocate, to the state judge advocate for review.~~

7 ~~(b) In a case reviewable by the state judge advocate under this section, the state~~
8 ~~judge advocate may act only with respect to the findings and sentence as~~
9 ~~approved by the convening authority. He may affirm only the findings of~~
10 ~~guilty, and the sentence or part or amount of the sentence, as he finds correct~~
11 ~~in law and fact and determined on the basis of the entire record, should be~~
12 ~~approved. In considering the record he may weigh the evidence, judge the~~
13 ~~credibility of witnesses and determine controverted questions of fact,~~
14 ~~recognizing that the trial court saw and heard the witnesses. If the state judge~~
15 ~~advocate sets aside the findings and sentence, he may, except where the~~
16 ~~setting aside is based on lack of sufficient evidence in the record to support~~
17 ~~the findings, order a rehearing. If he sets aside the findings and sentence and~~
18 ~~does not order a rehearing, he shall order that the charges be dismissed.~~

19 ~~(c) The state judge advocate shall instruct the convening authority to act in~~
20 ~~accordance with his decision on the review. If he has ordered a rehearing, but~~
21 ~~the convening authority finds a rehearing impracticable, he may dismiss the~~
22 ~~charges.~~

23 ~~(3) Except as provided in subsection (1) of this section, the convening authority of any~~
24 ~~summary or special court martial, after taking final action on review, shall forward~~
25 ~~the entire record, including his action thereon, to the staff judge advocate designated~~
26 ~~by the state judge advocate. The staff judge advocate has the duties and powers as~~
27 ~~provided for the state judge advocate in paragraphs (b) and (c) of subsection (2) of~~

1 this section.

2 ~~(4) The state judge advocate may order one (1) or more boards of review each~~
 3 ~~composed of not less than three (3) commissioned officers of the National Guard or~~
 4 ~~active militia, each of whom must be a member of the bar of the highest court of the~~
 5 ~~state. Each board of review shall review the record of any trial by special court-~~
 6 ~~martial referred to it by the state judge advocate. Boards of review have the same~~
 7 ~~authority on review as the state judge advocate has under this section].~~

8 ➔ SECTION 71. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 9 READ AS FOLLOWS:

10 *Final decisions of a court-martial shall be deemed the statutory equivalent of a Circuit*
 11 *Court decision. The appellate procedures to be followed shall be those provided by law*
 12 *for the appeal of criminal cases.*

13 ➔ SECTION 72. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 14 READ AS FOLLOWS:

15 *(1) The senior force judge advocate shall detail a judge advocate as appellate*
 16 *government counsel to represent the state in the review or appeal of cases*
 17 *specified in Section 71 of this Act and before any federal court when requested to*
 18 *do so by the state Attorney General. Appellate government counsel must be a*
 19 *member in good standing of the bar of the highest court of the state to which the*
 20 *appeal is taken.*

21 *(2) Upon an appeal by the state, an accused has the right to be represented by*
 22 *detailed military counsel before any reviewing authority and before any appellate*
 23 *court.*

24 *(3) Upon the appeal by an accused, the accused has the right to be represented by*
 25 *military counsel before any reviewing authority.*

26 *(4) Upon the request of an accused entitled to be so represented, the senior force*
 27 *judge advocate shall appoint a judge advocate to represent the accused in the*

1 review or appeal of cases specified in subsections (2) and (3) of this section.

2 (5) An accused may be represented by civilian appellate counsel at no expense to the
3 state.

4 ➔SECTION 73. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-
7 conduct discharge and if the right of the accused to appellate review is not
8 waived, and an appeal is not withdrawn under Section 66 of this Act, that part of
9 the sentence extending to dismissal or a dishonorable or bad-conduct discharge
10 may not be executed until there is a final judgment as to the legality of the
11 proceedings. A judgment as to the legality of the proceedings is final in such
12 cases when review is completed by an appellate court prescribed in Section 71 of
13 this Act, and is deemed final by the law of the state where the judgment was had.

14 (2) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-
15 conduct discharge and if the right of the accused to appellate review is waived, or
16 an appeal is withdrawn under Section 66 of this Act, that part of the sentence
17 extending to dismissal or a dishonorable or bad-conduct discharge may not be
18 executed until review of the case by the senior force judge advocate and any
19 action on that review under Section 69 of this Act is completed. Any other part of
20 the court-martial sentence may be ordered executed by the convening authority or
21 other person acting on the case under Section 65 of this Act when so approved
22 under that section.

23 ➔Section 74. KRS 35.340 is amended to read as follows:

24 (1) ~~Before~~~~[Prior to]~~ the vacation of the suspension of a special court-martial sentence,
25 which as approved includes a bad-conduct discharge, or of any general court-
26 martial sentence, the officer having special court-martial jurisdiction over the
27 probationer shall hold a hearing on the alleged violation of probation.~~[If he so~~

1 desires} The probationer shall be represented at the~~[such]~~ hearing~~[either]~~ by
 2 military counsel if the probationer so desires~~[provided by him or by counsel~~
 3 ~~provided for him at his request in the same manner as specified in KRS 35.335].~~

4 (2) The record of the hearing and the recommendation~~[recommendations]~~ of the
 5 officer having special court-martial jurisdiction shall be sent~~[forwarded]~~ for action
 6 to the officer exercising~~[state judge advocate in cases involving a]~~ general court-
 7 martial jurisdiction over the probationer~~[sentence]~~. If the officer~~[he]~~ vacates the
 8 suspension,~~[the vacation shall be effective to execute]~~ any unexecuted
 9 part~~[portion]~~ of the sentence, except a dismissal, shall be executed, subject to
 10 applicable restrictions in this code.

11 (3) The suspension of any other sentence may be vacated by any authority competent to
 12 convene, for the command in which the accused is serving or assigned, a court of
 13 the kind that imposed the sentence.

14 ➔ Section 75. KRS 35.345 is amended to read as follows:

15 At any time within two (2) years~~[one (1) year]~~ after approval by the convening authority
 16 of a court-martial sentence~~],~~ the accused may petition the adjutant general~~[Governor]~~
 17 for a new trial on grounds of newly discovered evidence or fraud in the court-martial.
 18 ~~[The Governor shall act upon the petition.]~~

19 ➔ Section 76. KRS 35.350 is amended to read as follows:

20 (1) Any authority competent to convene, for the command in which the accused is
 21 serving or assigned, a court of the kind that imposed the sentence~~[The convening~~
 22 ~~authority]~~ may remit or suspend any part or amount of the unexecuted part~~[portion]~~
 23 of any sentence, including all uncollected forfeitures other than a sentence
 24 approved by the Governor.

25 (2) The Governor may, for good cause, substitute an administrative form of discharge
 26 for a discharge or dismissal executed in accordance with the sentence of a court-
 27 martial.

➔ Section 77. KRS 35.355 is amended to read as follows:

- (1) Under such regulations as may be prescribed~~[pursuant to this chapter]~~, all rights, privileges, and property affected by an executed part~~[portion]~~ of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part~~[portion]~~ is included in a sentence imposed upon the new trial or rehearing.
- (2) ~~If~~~~[Where]~~ a previously executed sentence of dishonorable or bad-conduct~~[other punitive]~~ discharge is not imposed on a new trial, the Governor may~~[shall]~~ substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's~~[his]~~ enlistment.
- (3) ~~If~~~~[Where]~~ a previously executed sentence of dismissal is not imposed~~[sustained]~~ on a new trial, the Governor may~~[adjutant general shall]~~ substitute therefor a form of discharge authorized for administrative issuance, and the commissioned officer dismissed by that~~[such]~~ sentence may be reappointed by the Governor alone~~[, only,]~~ to such commissioned grade and with such rank~~[and precedence]~~ as in the opinion of the Governor that~~[such]~~ former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a~~[may be made provided a position]~~ vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct~~[is available under applicable tables of organization]~~. All time between the dismissal and the~~[such]~~ reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

➔ Section 78. KRS 35.360 is amended to read as follows:

The appellate review of records of trial provided~~[proceedings, findings and sentences of courts martial as reviewed and approved, as required]~~ by this code, the proceedings, findings, and sentences of~~[and all dismissals and discharges carried into execution]~~

1 pursuant to sentences by] courts-martial as approved, reviewed, or affirmed[following
 2 review and approval,] as required by this code, and all dismissals and discharges carried
 3 into execution under sentences by courts-martial following the approval, review, or
 4 affirmation as required by this code, are[shall be] final and conclusive. Orders
 5 publishing the proceedings of courts-martial and all action[actions] taken pursuant to
 6 those[such] proceedings are[shall be] binding upon all departments, courts, agencies, and
 7 officers of the United States and the several states[state], subject only to action upon a
 8 petition for a new trial as provided in KRS 35.345 and to action under Section 76 of this
 9 Act.

10 ➔SECTION 79. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 11 READ AS FOLLOWS:

12 Under regulations prescribed, an accused who has been sentenced by a court-martial
 13 may be required to take leave pending completion of action under this section if the
 14 sentence, as approved under Section 65 of this Act, includes an unsuspended dismissal
 15 or an unsuspended dishonorable or bad-conduct discharge. The accused may be
 16 required to begin that leave on the date on which the sentence is approved under
 17 Section 65 of this Act or at any time after that date, and the leave may be continued
 18 until the date on which action under this section is completed or may be terminated at
 19 an earlier time.

20 ➔SECTION 80. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 21 READ AS FOLLOWS:

22 The determination of lack of mental capacity or mental responsibility shall be
 23 determined pursuant to Kentucky state law as well as regulations of the Department of
 24 Defense of the United States and the laws of the United States governing the Armed
 25 Forces of the United States as required under the Kentucky Constitution.

26 ➔Section 81. KRS 35.440 is amended to read as follows:

27 Any subject person is a principal who;

1 (1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or
2 procures its commission;~~;~~ or

3 (2) Causes an act to be done which if directly performed by the person~~him~~ would be
4 punishable by this code~~;~~ ~~is a principal offender~~.

5 ➔SECTION 82. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
6 READ AS FOLLOWS:

7 Any person subject to this code who, knowing that an offense punishable by this code
8 has been committed, receives, comforts, or assists the offender in order to hinder or
9 prevent the person's apprehension, trial, or punishment shall be punished as a court-
10 martial may direct.

11 ➔Section 83. KRS 35.445 is amended to read as follows:

12 An accused may be found guilty of an offense necessarily included in the offense charged
13 or of an attempt to commit either the offense charged or~~of~~ an offense necessarily
14 included therein~~, but not both~~.

15 ➔Section 84. KRS 35.450 is amended to read as follows:

16 (1) An act, done with specific intent to commit an offense under this code, amounting
17 to more than mere preparation and tending, even though~~but~~ failing, to effect its
18 commission, is an attempt to commit that offense.

19 (2) Any~~subject~~ person subject to this code who attempts to commit any offense
20 punishable by this code shall be punished as a court-martial may direct, unless
21 otherwise specifically prescribed.

22 (3) Any~~subject~~ person subject to this code may be convicted of an attempt to commit
23 an offense although it appears on the trial that the offense was consummated.

24 ➔Section 85. KRS 35.451 is amended to read as follows:

25 Any person subject to this code who conspires with any other person to commit an
26 offense under this code shall, if one or more of the conspirators does an act to effect the
27 object of the conspiracy, be punished as a court-martial may direct~~directs~~.

➔Section 86. KRS 35.470 is amended to read as follows:

(1) Any~~[- subject]~~ person subject to this code who solicits or advises another or others to desert in violation of Section 89 of this Act~~[KRS 35.460 and this section]~~, or mutiny in violation of Section 98 of this Act~~[KRS 35.465 and this section]~~, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy~~[or any hostile force]~~ in violation of KRS 35.600 or sedition in violation of Section 98 of this Act~~[KRS 35.465]~~ shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct~~[directs]~~.

➔Section 87. KRS 35.471 is amended to read as follows:

Any person shall be punished as a court-martial may direct who~~[directs when he]~~:

- (1) Procures his or her own enlistment or appointment in the state military forces~~[National Guard or active militia]~~ by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
- (2) Procures his or her own separation from the state military forces~~[National Guard or active militia]~~ by knowingly false representation or deliberate concealment as to his or her eligibility for that separation.

➔Section 88. KRS 35.472 is amended to read as follows:

Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces~~[National Guard or active militia]~~ of any person

1 who is known to him or her to be ineligible for that enlistment, appointment, or
 2 separation because it is prohibited by law, regulation or order shall be punished as a
 3 court-martial may direct~~[directs]~~.

4 ➔ Section 89. KRS 35.460 is repealed, reenacted as a new section of KRS Chapter
 5 35, and amended to read as follows:

6 (1) Any member of the state military forces~~[National Guard or active militia who is~~
 7 ~~found guilty of any of the following conduct]~~ is guilty of desertion who:

8 (a) Without proper authority goes or remains absent from the member's unit~~[his~~
 9 ~~place of service]~~, organization, or place of duty with intent to remain away
 10 from there~~[therefrom]~~ permanently;

11 (b) Quits the member's~~[his]~~ unit,~~[or]~~ organization, or place of duty with intent to
 12 avoid hazardous duty or to shirk important service; or

13 (c) Without being regularly separated from one (1) of the state military forces~~[of~~
 14 ~~the National Guard or active militia]~~ enlists or accepts an appointment in the
 15 same or another one (1) of the state military forces, or in one of the Armed
 16 Forces of the United States,~~[of the National Guard or active militia]~~ without
 17 fully disclosing the fact the member~~[he]~~ has not been~~[so]~~ regularly separated,
 18 or enters any foreign armed service except when authorized by the United
 19 States.

20 (2) Any commissioned officer of the state military forces who, after tender of the
 21 officer's~~[National Guard or active militia, who having tendered his]~~ resignation and
 22 before~~[prior to due]~~ notice of its~~[the]~~ acceptance~~[of the same]~~, quits his or her post
 23 or proper duties without leave and with intent to remain away therefrom
 24 permanently is guilty of desertion.

25 (3) Any person found guilty of desertion or attempt to desert shall be punished, if the
 26 offense is committed in time of war, by confinement of not more than ten (10)
 27 years or such other punishment as a court-martial may direct, but if the desertion

1 or attempt to desert occurs at any other time, by such punishment as a court-
 2 martial may direct~~{directs}~~.

3 ➔ Section 90. KRS 35.461 is repealed, reenacted as a new section of KRS Chapter
 4 35, and amended to read as follows:

5 Any person subject to this code shall be punished as a court-martial directs who~~{when~~
 6 ~~he}~~, without authority:

- 7 (1) Fails to go to the~~{his}~~ appointed place of duty at the time prescribed;~~{or}~~
- 8 (2) Goes from that place; or
- 9 (3) Absents himself or herself or remains absent from the~~{his}~~ unit, organization, or
 10 place of duty at which the person~~{he}~~ is required to be at the time prescribed.

11 ➔ Section 91. KRS 35.462 is repealed, reenacted as a new section of KRS Chapter
 12 35, and amended to read as follows:

13 Any person subject to this code who through neglect or design misses the movement of a
 14 ship, aircraft, or unit with which the person~~{he}~~ is required in the course of duty to move
 15 shall be punished as a court-martial may direct~~{directs}~~.

16 ➔ Section 92. KRS 35.476 is amended to read as follows:

17 Any person subject to this code who uses contemptuous words against the President or
 18 the Governor which may detrimentally affect the morale or effectiveness of any unit of
 19 the state military forces~~{National Guard or active militia}~~ shall be punished as a court-
 20 martial may direct~~{directs}~~.

21 ➔ SECTION 93. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 22 READ AS FOLLOWS:

23 Any person subject to this code who behaves with disrespect toward the person's
 24 superior commissioned officer shall be punished as a court-martial may direct.

25 ➔ Section 94. KRS 35.481 is amended to read as follows:

26 Any person subject to this code who~~{shall be punished as a court-martial directs when~~
 27 ~~he}~~:

- 1 (1) Strikes the person's~~[his]~~ superior commissioned officer or draws or lifts up any
 2 weapon or offers any violence against the superior commissioned officer~~[him]~~
 3 while he or she is in the execution of his or her office; or
- 4 (2) Willfully disobeys a lawful command of the person's~~[his]~~ superior commissioned
 5 officer;
- 6 shall be punished, if the offense is committed in time of war, by confinement of not
 7 more than ten (10) years or such other punishment as a court-martial may direct, and
 8 if the offense is committed at any other time, by such punishment as a court-martial
 9 may direct.

10 ➔Section 95. KRS 35.480 is repealed, reenacted as a new section of KRS Chapter
 11 35, and amended to read as follows:

12 Any warrant officer or enlisted member is~~[person who is found]~~ guilty of any of the
 13 following offenses and shall be punished as a court-martial may direct who:

- 14 (1) Strikes or assaults a warrant officer,~~[or]~~ noncommissioned officer, or petty officer,
 15 while that~~[such]~~ officer is in the execution of his or her office;
- 16 (2) Willfully disobeys the lawful order of a warrant officer,~~[or]~~ noncommissioned
 17 officer, or petty officer;
- 18 (3) Treats with contempt or is disrespectful in language or deportment toward ~~a~~an
 19 ~~officer,~~ warrant officer,~~[or]~~ noncommissioned officer, or petty officer while
 20 that~~[such]~~ officer is in the execution of his or her office.

21 ➔Section 96. KRS 35.491 is amended to read as follows:

22 Any person subject to this code shall be punished as a court-martial may direct
 23 who:~~[directs when he knowingly]~~

- 24 (1) Violates or fails to obey any lawful general order or regulation;
- 25 (2) Having knowledge of any other lawful order issued by a member of the state
 26 military forces, which it is the person's duty to obey, fails to obey the order; or
- 27 (3) Is derelict in the performance of the person's duties~~[, including an order to report~~

1 for state active duty].

2 ➔ Section 97. KRS 35.575 is amended to read as follows:

3 Any person subject to this code who is guilty of cruelty toward, or oppression or
4 maltreatment of, any person subject to the person's~~[his]~~ orders~~[,]~~ shall be punished as a
5 court-martial may direct~~[directs]~~.

6 ➔ Section 98. KRS 35.465 is repealed, reenacted as a new section of KRS Chapter
7 35, and amended to read as follows:

8 (1) Any person subject to this code shall be punished as a court-martial may direct
9 who~~[directs when he]~~:

10 (a)~~[(1)]~~ With intent to usurp or override lawful military authority, refuses, in
11 concert with any other person~~[or persons]~~, to obey orders or otherwise do his
12 or her duty or creates any violence or disturbance is guilty of mutiny.

13 (b)~~[(2)]~~ With intent to cause the overthrow or destruction of lawful civil
14 authority, creates, in concert with any other person~~[or persons]~~, revolt,
15 violence, or other disturbance against that~~[such]~~ authority is guilty of sedition.

16 (c)~~[(3)]~~ Fails to do his or her utmost to prevent and suppress a~~[an offense of]~~
17 mutiny or sedition being committed in his or her presence, or fails to take all
18 reasonable means to inform his or her superior commissioned officer or
19 commanding officer of an offense of mutiny or sedition which he or she
20 knows or has reason to believe is taking place, is guilty of a failure to suppress
21 or report a mutiny or sedition.

22 (2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to
23 suppress or report a mutiny or sedition shall be punished as a court-martial may
24 direct.

25 ➔ Section 99. KRS 35.580 is amended to read as follows:

26 Any person subject to this code shall be punished as a court-martial may direct who:

27 (1) Resists apprehension;

1 (2) Flees from apprehension;~~[or]~~

2 (3) Breaks arrest; or

3 (4) [Who] Escapes from custody or confinement~~[physical restraint lawfully imposed~~
4 ~~shall be punished as a court-martial directs].~~

5 ➔Section 100. KRS 35.585 is amended to read as follows:

6 Any person subject to this code who, without proper authority, releases any prisoner
7 committed to his or her charge, or who through neglect or design suffers any such
8 prisoner to escape, shall be punished as a court-martial may direct~~[directs]~~, whether or
9 not the prisoner was committed in strict compliance with law.

10 ➔Section 101. KRS 35.590 is amended to read as follows:

11 Any person subject to this code who, except as provided by law or regulation,
12 apprehends, arrests, or confines any person shall be punished as a court-martial may
13 direct~~[directs]~~.

14 ➔Section 102. KRS 35.595 is amended to read as follows:

15 Any person subject to this code shall be punished as a court-martial may direct
16 who~~[directs when he]~~:

17 (1) Is responsible for unnecessary delay in the disposition of any case of a person
18 accused of an offense under this code; or

19 (2) Knowingly and intentionally fails to enforce or comply with any provision of this
20 code regulating the proceedings before, during, or after trial of an accused.

21 ➔Section 103. KRS 35.600 is amended to read as follows:

22 Any person subject to this code shall be punished as a court-martial may direct
23 who~~[directs when he]~~, before or in the presence of the enemy or any hostile force:

24 (1) Runs away;~~[or]~~

25 (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or
26 military property which it is his or her duty to defend;~~[or]~~

27 (3) Through disobedience, neglect, or intentional misconduct endangers the safety of

1 any such command, unit, place, or military property;~~[-or]~~

2 (4) Casts away his or her arms or ammunition;~~[-or]~~

3 (5) Is guilty of cowardly conduct;~~[-or]~~

4 (6) Quits his or her place of duty to plunder or pillage;~~[-or]~~

5 (7) Causes false alarms in any command, unit, or place under control of the Armed
6 Forces of the United States or the state military forces;~~[National Guard or active
7 militia; or]~~

8 (8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any
9 enemy troops,~~[- hostile forces,]~~ combatants, vessels, aircraft, or any other thing,
10 which it is his or her duty so to encounter, engage, capture, or destroy; or

11 (9) Does not afford all practicable relief and assistance to any troops, combatants,
12 vessels, or aircraft of the Armed Forces belonging to the United States or their
13 allies, to the state, or to any other state, when engaged in battle.

14 ➔Section 104. KRS 35.605 is amended to read as follows:

15 Any person subject to this code who compels or attempts to compel the commander of~~[-~~
16 any of] the state military forces~~[National Guard or active militia]~~ of the state, or of any
17 other state, place, vessel, aircraft, or other military property, or of any body of members
18 of the Armed Forces, to give it up to an enemy~~[- or any hostile force]~~ or to abandon it, or
19 who strikes the colors or flag to an enemy~~[- or any hostile force]~~ without proper authority,
20 shall be punished as a court-martial may direct~~[directs]~~.

21 ➔SECTION 105. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
22 READ AS FOLLOWS:

23 Any person subject to this code who in time of war discloses the parole or countersign
24 to any person not entitled to receive it or who gives to another, who is entitled to receive
25 and use the parole or countersign, a different parole or countersign from that which, to
26 his knowledge, he was authorized and required to give, shall be punished as a court-
27 martial may direct.

➔SECTION 106. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
READ AS FOLLOWS:

Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

➔Section 107. KRS 35.620 is amended to read as follows:

(1) All persons subject to this code shall secure all property taken *for the service of the United States or the state*,~~[from the enemy or any hostile force]~~ and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code shall be punished as a court-martial *may direct who*~~[directs when he]~~:

(a) Fails to carry out the duties prescribed in subsection (1) of this section; or

(b) Buys, sells, trades, or in any way deals in or disposes of *taken*, captured or abandoned property whereby he *or she* receives or expects any profit, benefit, or advantage to himself *or herself* or another *person* directly or indirectly connected~~[with himself]~~; or

(c) Engages in looting or pillaging.

➔Section 108. KRS 35.625 is amended to read as follows:

Any person subject to this code shall be punished as a court-martial *may direct who*~~[directs when he]~~:

(1) Aids, or attempts to aid, the enemy~~[or any hostile force]~~ with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy~~[or any hostile force]~~, either directly or indirectly.

➔Section 109. KRS 35.630 is amended to read as follows:

Any person subject to this code shall be punished as a court-martial *may direct*

1 ~~who~~[directs when he], while in the hands of the enemy in time of war[~~or any hostile~~
2 ~~force~~]:

3 (1) For the purpose of securing favorable treatment by his or her captors, acts without
4 proper authority in a manner contrary to law, custom, or regulation, to the detriment
5 of others of whatever nationality held by the enemy[~~or any hostile force~~] as
6 civilian or military prisoners; or

7 (2) While in a position of authority over such persons[prisoners] maltreats them
8 without justifiable cause.

9 ➔ Section 110. KRS 35.635 is amended to read as follows:

10 Any person subject to this code who, with intent to deceive, signs any false record, return,
11 regulation, order, or other official document made in the line of duty, knowing it to be
12 false, or makes any other false official statement made in the line of duty, knowing it to
13 be false, shall be punished as a court-martial may direct[directs].

14 ➔ SECTION 111. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
15 READ AS FOLLOWS:

16 Any person subject to this code shall be punished as a court-martial may direct, if that
17 person, without proper authority:

18 (1) Sells or otherwise disposes of;

19 (2) Willfully or through neglect damages, destroy, or loses; or

20 (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or
21 wrongfully disposed of;

22 any military property of the United States or of any state.

23 ➔ Section 112. KRS 35.640 is amended to read as follows:

24 Any person subject to this code who[~~while in a duty status~~] willfully or recklessly
25 wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property
26 other than military property of the United States or of any[the] state shall be punished as
27 a court-martial may direct[directs].

1 ➔SECTION 113. A NEW SECTION OF KRS CHAPTER 110 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) Any person subject to this code who willfully and wrongfully hazards or suffers to
4 be hazarded any vessel of the Armed Forces of the United States or any state
5 military forces shall suffer such punishment as a court-martial may direct.

6 (2) Any person subject to this code who negligently hazards or suffers to be hazarded
7 any vessel of the Armed Forces of the United States or any state military forces
8 shall be punished as a court-martial may direct.

9 ➔Section 114. KRS 35.645 is amended to read as follows:

10 Any person subject to this code who operates or is in physical control of any vehicle
11 while under the influence of alcohol or any other substances or combination of
12 substances which impair one's driving ability~~[drunk]~~, or in a reckless or wanton manner,
13 shall be punished as a court-martial may direct~~[directs]~~.

14 ➔Section 115. KRS 35.650 is amended to read as follows:

15 Any person subject to this code other than a sentinel or lookout, who is found drunk on
16 duty~~[or sleeping upon his post, or who leaves his post before he is regularly relieved]~~,
17 shall be punished as a court-martial may direct~~[directs]~~.

18 ➔SECTION 116. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) Any person subject to this code who wrongfully uses, possesses, manufactures,
21 distributes, or imports into the customs territory of the United States, exports
22 from the United States, or introduces into an installation, vessel, vehicle, or
23 aircraft used by or under the control of the Armed Forces of the United States,
24 state military forces, or the state military forces of any other state a substance
25 described in subsection (2) of this section shall be punished as a court-martial
26 may direct.

27 (2) The substances referred to in subsection (1) of this section are the following:

1 (a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
 2 methamphetamine, phencyclidine, barbituric acid, and marijuana and any
 3 compound or derivative of any of these substances.

4 (b) Any substance not specified in paragraph (a) of this subsection that is listed
 5 on a schedule of controlled substances prescribed by the President for the
 6 purposes of the Uniform Code of Military Justice of the Armed Forces of
 7 the United States, 10 U.S.C. secs. 801 et seq.

8 (c) Any other substance not specified in paragraph (a) of this subsection or
 9 contained on a list prescribed by the President under paragraph (b) of this
 10 subsection that is listed in schedules I through V of Article 202 of the
 11 Controlled Substances Act, 21 U.S.C. sec. 812.

12 ➔SECTION 117. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 13 READ AS FOLLOWS:

14 Any sentinel or lookout who is found drunk or sleeping upon his or her post or leaves
 15 it before being regularly relieved, shall be punished, if the offense is committed in a
 16 time of war, by confinement of not more than ten (10) years or other punishment as a
 17 court-martial may direct, but if the offense is committed at any other time, by such
 18 punishment as a court-martial may direct.

19 ➔SECTION 118. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 20 READ AS FOLLOWS:

21 Any person subject to this code who fights or promotes, or is concerned in or connives
 22 at fighting a duel, or who, having knowledge of a challenge sent or about to be sent,
 23 fails to report the fact promptly to the proper authority, shall be punished as a court-
 24 martial may direct.

25 ➔Section 119. KRS 35.660 is amended to read as follows:

26 Any person subject to this code shall be punished as a court-martial may direct
 27 who~~[directs when he]~~, for the purpose of avoiding work, duty or service~~[in the National~~

1 ~~Guard or active militia~~:

2 (1) Feigns illness, physical disablement, mental lapse, or derangement; or

3 (2) Intentionally inflicts self-injury.

4 ➔Section 120. KRS 35.665 is amended to read as follows:

5 Any person subject to this code who causes or participates in any riot or breach of the
6 peace shall be punished as a court-martial may direct~~[directs]~~.

7 ➔SECTION 121. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
8 READ AS FOLLOWS:

9 *Any person subject to this code who uses provoking or reproachful words or gestures*
10 *towards another person subject to this code shall be punished as a court-martial may*
11 *direct.*

12 ➔SECTION 122. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
13 READ AS FOLLOWS:

14 *(1) Any person subject to this code is guilty of rape and shall be punished as a court-*
15 *martial may direct who commits a sexual act upon another person by:*

16 *(a) Using unlawful force against another person;*

17 *(b) Using force causing or likely to cause death or grievous bodily harm to any*
18 *person;*

19 *(c) Threatening or placing that other person in fear that any person will be*
20 *subject to death, grievous bodily harm, or kidnapping;*

21 *(d) First rendering that other person unconscious; or*

22 *(e) Administering to that other person by force or threat, or without the*
23 *knowledge or consent of that person, a drug, intoxicant, or other similar*
24 *substance and thereby substantially impairing the ability of that other*
25 *person to appraise or control conduct.*

26 *(2) Any person subject to this code is guilty of sexual assault and shall be punished*
27 *as a court-martial may direct who:*

1 (a) Commits a sexual act upon another person by:

2 1. Threatening or placing that other person in fear;

3 2. Causing bodily harm to that other person;

4 3. Making a fraudulent representation that the sexual act serves a
5 professional purpose; or

6 4. Inducing a belief by an artifice, pretense, or concealment that the
7 person is another person;

8 (b) Commits a sexual act upon another person when the person knows or
9 reasonably should know that the other person is asleep, unconscious, or
10 otherwise unaware that the sexual act is occurring; or

11 (c) Commits a sexual act upon another person when the other person is
12 incapable of consenting to the sexual act due to:

13 1. Impairment by any drug, intoxicant, or other similar substance, and
14 that condition is known or reasonably should be known by the person;

15 or

16 2. A mental disease or defect, or physical disability, and that condition is
17 known or reasonably should be known by the person.

18 (3) Any person subject to this code who commits or causes sexual contact upon or by
19 another person, if to do so would violate subsection (1) of this section had the
20 sexual contact been a sexual act, is guilty of aggravated sexual contact and shall
21 be punished as a court-martial may direct.

22 (4) Any person subject to this chapter who commits or causes sexual contact upon or
23 by another person, if to do so would violate subsection (2) of this section had the
24 sexual contact been a sexual act, is guilty of abusive sexual contact and shall be
25 punished as a court-martial may direct.

26 (5) In a prosecution under this section, in proving that a person made a threat, it
27 need not be proven that the person actually intended to carry out the threat or

1 had the ability to carry out the threat.

2 (6) An accused may raise any applicable defenses available under this code or the
 3 Rules for Court-Martial. Marriage is not a defense for the conduct in issue in any
 4 prosecution under this section.

5 (7) In this section:

6 (a) "Sexual act" means:

7 1. Contact between the penis and the vulva or anus or mouth, and for
 8 purposes of this subparagraph contact involving the penis occurs
 9 upon penetration, however slight; or

10 2. The penetration, however slight, of the vulva or anus or mouth of
 11 another by any part of the body or by any object, with an intent to
 12 abuse, humiliate, harass, or degrade any person or to arouse or gratify
 13 the sexual desire of any person.

14 (b) "Sexual contact" means:

15 1. Touching, or causing another person to touch, either directly or
 16 through the clothing, the genitalia, anus, groin, breast, inner thigh, or
 17 buttocks of any person, with an intent to abuse, humiliate, or degrade
 18 any person; or

19 2. Any touching, or causing another person to touch, either directly or
 20 through the clothing, any body parts of another person, if done with
 21 an intent to arouse or gratify the sexual desire of any person.
 22 Touching may be accomplished by any part of the body.

23 (c) "Bodily harm" means any offensive touching of another, however slight,
 24 including any nonconsensual sexual act or nonconsensual sexual contact.

25 (d) "Grievous bodily harm" means serious bodily injury. It includes fractures
 26 or dislocated bones, deep cuts, torn members of the body, serious damage to
 27 internal organs, and other severe bodily injuries. It does not include minor

1 injuries such as a black eye or a bloody nose.

2 (e) "Force" means:

3 1. The use of a weapon;

4 2. The use of such physical strength or violence as is sufficient to
5 overcome, restrain, or injure a person; or

6 3. Inflicting physical harm sufficient to coerce or compel submission by
7 the victim.

8 (f) "Unlawful force" means an act of force done without legal justification or
9 excuse.

10 (g) "Threatening or placing that other person in fear" means a communication
11 or action that is of sufficient consequences to cause a reasonable fear that
12 non-compliance will result in the victim or another person being subjected
13 to the wrongful action contemplated by the communication or action.

14 (h) "Consent":

15 1. The term "consent" means a freely given agreement to the conduct at
16 issue by a competent person. An expression of lack of consent through
17 words or conduct means there is no consent. Lack of verbal or
18 physical resistance or submission resulting from the use of force,
19 threat of force, or placing another person in fear does not constitute
20 consent. A current or previous dating or social or sexual relationship
21 by itself or the manner of dress of the person involved with the
22 accused in the conduct at issue shall not constitute consent.

23 2. A sleeping, unconscious, or incompetent person cannot consent. A
24 person cannot consent to force causing or likely causing death or
25 grievous bodily harm or to being rendered unconscious. A person
26 cannot consent while under threat or fear or under the circumstances
27 described in subsection (2)(a)3. and 4. of this section.

1 3. Lack of consent may be inferred based on the circumstances of the
 2 offense. All the surrounding circumstances are to be considered in
 3 determining whether a person gave consent, or whether a person did
 4 not resist or ceased to resist only because of another person's actions.

5 ➔SECTION 123. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 6 READ AS FOLLOWS:

7 (1) Any person subject to this code is guilty of stalking and shall be punished as a
 8 court-martial may direct who:

9 (a) Wrongfully engages in a course of conduct directed at a specific person that
 10 would cause a reasonable person to fear death or bodily harm, including
 11 sexual assault, to himself or herself or a member of his or her immediate
 12 family;

13 (b) Has knowledge, or should have knowledge, that the specific person will be
 14 placed in reasonable fear of death or bodily harm, including sexual assault,
 15 to himself or herself or a member of his or her immediate family; and

16 (c) Induces reasonable fear in the specific person or bodily harm, including
 17 sexual assault, to himself or herself or to a member of his or her immediate
 18 family, through the person's actions.

19 (2) In this section:

20 (a) "Course of conduct" means:

21 1. A repeated maintenance of visual or physical proximity to a specific
 22 person; or

23 2. A repeated conveyance of verbal threat, written threats, or threats
 24 implied by conduct, or a combination of these threats, directed at or
 25 towards a specific person.

26 (b) "Repeated," with respect to conduct, means two (2) or more occasions of
 27 that conduct.

1 (c) "Immediate family," in the case of a specific person, means a spouse,
 2 parent, child, or sibling of the person, or any other family member, relative,
 3 or intimate partner of the person who regularly resides in the household of
 4 the person or who within the six (6) months preceding the commencement
 5 of the course of conduct regularly resided in the household of the person.

6 ➔SECTION 124. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 7 READ AS FOLLOWS:

8 (1) Any person subject to this code is guilty on an offense under this section and
 9 shall be punished as a court-martial may direct who, without legal justification or
 10 lawful authorization:

11 (a) Knowingly or wrongfully views the private area of another person, without
 12 that other person's consent and under circumstances in which that other
 13 person has a reasonable expectation of privacy;

14 (b) Knowingly photographs, videotapes, films, or records by any means the
 15 private area of another person, without that other person's consent or under
 16 circumstances in which that other person has a reasonable expectation of
 17 privacy; or

18 (c) Knowingly broadcasts or distributes any recording that the person knew or
 19 reasonably should have known was made under the circumstances
 20 proscribed in paragraphs (a) and (b) of this subsection.

21 (2) Any person subject to this code who compels another person to engage in the act
 22 of prostitution with any person is guilty of forcible pandering and shall be
 23 punished as a court-martial may direct.

24 (3) Any person subject to this code who intentionally exposes, in an indecent
 25 manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of
 26 indecent exposure and shall be punished as a court-martial may direct.

27 (4) In this section:

1 (a) "Act of prostitution" means a sexual act or sexual contact as defined in
 2 subsection (7) of Section 122 of this Act on account of which anything of
 3 value is given to, or received by, any person.

4 (b) "Private area" means the naked or underwear-clad genitalia, anus,
 5 buttocks, or female areola or nipple.

6 (c) "Under circumstances in which that other person has a reasonable
 7 expectation of privacy" means:

8 1. Circumstances in which a reasonable person would believe that he or
 9 she could disrobe in privacy, without being concerned that an image
 10 of a private area of that person was being captured; or

11 2. Circumstances in which a reasonable person would believe that a
 12 private area of that person would not be visible to the public.

13 (d) "Broadcast" means delivering to the actual or constructive possession of
 14 another, including transmission by electronic means.

15 (e) "Indecent manner" means conduct that amounts to a form of immorality
 16 relating to sexual impurity which is grossly vulgar, obscene, and repugnant
 17 to common propriety, and tends to excite sexual desire or deprave morals
 18 with respect to sexual relations.

19 ➔Section 125. KRS 35.670 is repealed, reenacted as a new section of KRS
 20 Chapter 35, and amended to read as follows:

21 (1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any
 22 means, from the possession of the owner or of any other person any money,
 23 personal property, or articles of value of any kind:

24 (a) With intent permanently to deprive or defraud another person of the use and
 25 benefit of property or to appropriate it to his or her own use or the use of any
 26 person other than the owner, steals that property and is guilty of larceny; or

27 (b) With intent temporarily to deprive or defraud another person of the use and

1 benefit of property or to appropriate it to his or her own use or the use of any
 2 person other than the owner, is guilty of wrongful appropriation.

3 (2) Any person found guilty of larceny or wrongful appropriation shall be punished as a
 4 court-martial may direct~~[directs]~~.

5 ➔SECTION 126. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 6 READ AS FOLLOWS:

7 Any person subject to this code who with intent to steal takes anything of value from
 8 the person or in the presence of another, against his or her will, by means of force of
 9 violence or fear of immediate of future injury to his or her person or property or to the
 10 person or property of a relative or member of his or her family or of anyone in his or
 11 her company at the time of the robbery, is guilty of robbery and shall be punished as a
 12 court-martial may direct.

13 ➔SECTION 127. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 14 READ AS FOLLOWS:

15 Any person subject to this code is guilty of forgery and shall be punished as a court-
 16 martial may direct who, with intent to defraud:

17 (1) Falsely makes or alters any signature to, or any part of, any writing which would,
 18 if genuine, apparently impose a legal liability on another or change his or her
 19 legal right or liability to his or her prejudice; or

20 (2) Utters, offers, issues, or transfers such a writing, known to him or her to be so
 21 made or altered.

22 ➔SECTION 128. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 23 READ AS FOLLOWS:

24 (1) Any person subject to this code is guilty of making, drawing, or uttering a check,
 25 draft, or order without sufficient funds and shall be punished as a court-martial
 26 may direct who:

27 (a) For the procurement of any article or thing of value, with the intent to

1 defraud; or

2 (b) For the payment of any past due obligation, or for any other purpose, with
 3 intent to deceive;

4 makes, draws, utters, or delivers any check, draft, or order for the payment of
 5 money upon any bank or other depository, knowing at the time that the maker or
 6 drawer has not or will not have sufficient funds in, or credit with, the bank or
 7 other depository for the payment of that check, draft, or order in full upon its
 8 presentment.

9 (2) The making, drawing, uttering, or delivering by a maker or drawer of a check,
 10 draft, or order, payment of which is refused by the drawee because of insufficient
 11 funds of the maker or drawer in the drawee's possession or control, is prima facie
 12 evidence of his or her intent to defraud or deceive and of his or her knowledge of
 13 insufficient funds in, or credit with, that bank or other depository, unless the
 14 maker or drawer pays the holder the amount due within five (5) days after
 15 receiving notice, orally or in writing, that the check, draft, or order was not paid
 16 on presentment.

17 (3) In this section, "credit" means an arrangement or understanding, express or
 18 implied, with the bank or other depository for the payment of that check, draft, or
 19 order.

20 ➔SECTION 129. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 21 READ AS FOLLOWS:

22 Any person subject to this code is guilty of maiming and shall be punished as a court-
 23 martial may direct who, with intent to injure, disfigure, or disable, inflicts upon the
 24 person of another an injury which:

25 (1) Seriously disfigures his or her person by any mutilation thereof;

26 (2) Destroys or disables any member or organ of his or her body; or

27 (3) Seriously diminishes his or her physical vigor by the injury of any member or

1 organ.

2 ➔SECTION 130. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) Any person subject to this code who willfully and maliciously burns or sets on
5 fire an inhabited dwelling, or any other structure, movable or immovable,
6 wherein to the knowledge of the offender there is at the time a human being, is
7 guilty of aggravated arson and shall be punished as a court-martial may direct.

8 (2) Any person subject to this chapter who willfully and maliciously burns or sets fire
9 to the property of another, except as provided in subsection (1) of this section, is
10 guilty of simple arson and shall be punished as a court-martial may direct.

11 ➔SECTION 131. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
12 READ AS FOLLOWS:

13 Any person subject to this code who communicates threats to another person with the
14 intention thereby to obtain anything of value or any acquittance, advantage, or
15 immunity is guilty of extortion and shall be punished as a court-martial may direct.

16 ➔SECTION 132. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
17 READ AS FOLLOWS:

18 (1) Any person subject to this code who attempts or offers with unlawful force or
19 violence to do bodily harm to another person, whether or not the attempt or offer
20 is consummated, is guilty of assault and shall be punished as a court-martial may
21 direct.

22 (2) Any person subject to this chapter is guilty of aggravated assault and shall be
23 punished as a court-martial may direct who:

24 (a) Commits an assault with a dangerous weapon or other means or force likely
25 to produce death or grievous bodily harm; or

26 (b) Commits an assault and intentionally inflicts grievous bodily harm with or
27 without a weapon.

➔SECTION 133. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
READ AS FOLLOWS:

Any person subject to the code who, with intent to commit an offense punishable under Sections 122 to 132 of this Act, breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

➔SECTION 134. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
READ AS FOLLOWS:

Any person subject to this code who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

➔Section 135. KRS 35.455 is repealed, reenacted as a new section of KRS Chapter 35, and amended to read as follows:

Any subject person subject to this code is guilty of perjury and shall be punished as a court-martial may direct who, in a judicial proceeding or course of justice, willfully and corruptly;

(1) ~~[gives,]~~Upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) In any declaration, certificate, verification, or statement under penalty of perjury as permitted under 28 U.S.C. sec. 1746, subscribes any false statement material to the issue or matter of inquiry~~[is guilty of perjury and shall be punished as a court-martial directs].~~

➔SECTION 136. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
READ AS FOLLOWS:

Any person subject to this code who:

(1) Knowing it to be false or fraudulent:

(a) Makes any claim against the United States, the state, or any officer thereof;

or

1 **(b) Presents to any person in the civil or military service thereof, for approval**
 2 **or payment, any claim against the United States, the state, or any officer**
 3 **thereof;**

4 **(2) For the purposes of obtaining the approval, allowance, or payment of any claim**
 5 **against the United States, the state, or any officer thereof:**

6 **(a) Makes or uses any writing or other paper knowing it to contain any false or**
 7 **fraudulent statements;**

8 **(b) Makes any oath, affirmation, or certification to any fact or to any writing or**
 9 **other paper knowing the oath, affirmation, or certification to be false; or**

10 **(c) Forges or counterfeits any signature upon any writing or other paper, or**
 11 **uses any such signature knowing it to be forged or counterfeited;**

12 **(3) Having charge, possession, custody, or control of any money, or other property of**
 13 **the United States or the state, furnished or intended for the Armed Forces of the**
 14 **United States or the state military forces, knowingly delivers to any person having**
 15 **authority to receive it, any amount thereof less than that for which he or she**
 16 **receives a certificate or receipt; or**

17 **(4) Being authorized to make or deliver any paper certifying the receipt of any**
 18 **property of the United States or the state, furnished or intended for the Armed**
 19 **Forces of the United States or the state military forces, makes or delivers to any**
 20 **person such writing without having full knowledge of the truth of the statements**
 21 **therein contained and with intent to defraud the United States or the state;**

22 **shall, upon conviction, be punished as a court-martial may direct.**

23 ➔Section 137. KRS 35.475 is repealed, reenacted as a new section of KRS
 24 Chapter 35, and amended to read as follows:

25 Any commissioned officer, **cadet, candidate, or midshipman**~~[- or warrant officer]~~ who is
 26 convicted of conduct unbecoming an officer and a gentleman shall be punished as a
 27 court-martial may direct.

1 ➔Section 138. KRS 35.680 is repealed, reenacted as a new section of KRS
2 Chapter 35, and amended to read as follows:

3 Though not specifically mentioned in this code, all disorders and neglects to the prejudice
4 of good order and discipline in the state military forces~~[National Guard or active militia]~~
5 and all conduct of a nature to bring discredit upon the state military forces~~[National~~
6 ~~Guard or active militia, of which persons subject to this code may be guilty,]~~ shall be
7 taken cognizance of by a~~[general, special, or summary]~~ court-martial~~[, according to the~~
8 ~~nature and degree of the offense,]~~ and~~[shall be]~~ punished at the discretion of a
9 military~~[that]~~ court. However, where a crime constitutes an offense that violates both
10 this code and the criminal laws of the state where the offense occurs or criminal laws
11 of the United States, jurisdiction of the military court must be determined in
12 accordance with subsection (2) of Section 7 of this Act~~[cognizance may not be taken of~~
13 ~~and jurisdiction may not be extended to any offense which constitutes a felony under the~~
14 ~~laws of this state without a prior written waiver by the Commonwealth's attorney of the~~
15 ~~county where the alleged offense occurred].~~

16 ➔Section 139. KRS 35.375 is repealed, reenacted as a new section of KRS
17 Chapter 35, and amended to read as follows:

- 18 (1) Courts of inquiry to investigate any matter of concern to the state military forces
19 may be convened by any person authorized to convene a general court-martial,
20 whether or not the persons involved have requested an inquiry~~[the Governor].~~
- 21 (2) A court of inquiry consists~~[shall consist]~~ of three (3) or more commissioned
22 officers. For each court of inquiry the convening authority shall also appoint
23 counsel for the court.
- 24 (3) Any~~[subject]~~ person subject to this code whose conduct is subject to inquiry shall
25 be designated as a party. Any~~[subject]~~ person subject to this code~~[or person~~
26 ~~employed in the military department of the Commonwealth of Kentucky]~~ who has a
27 direct interest in the subject of inquiry has~~[shall have]~~ the right to be designated as

1 a party upon request to the court. Any person designated as a party shall be given
 2 due notice and shall have the right to be present, to be represented by counsel, to
 3 cross-examine witnesses, and to introduce evidence.

4 (4) Members of a court of inquiry may be challenged by a party, but only for cause
 5 stated to the court.

6 (5) The members, counsel, the reporter, and interpreters of courts of inquiry shall take
 7 an oath or affirmation to faithfully perform their duties.

8 (6) Witnesses may be summoned to appear and testify and be examined before courts
 9 of inquiry, ~~in like manner~~ as provided for ~~in~~ courts-martial.

10 (7) Courts of inquiry shall make findings of fact but shall not express opinions or make
 11 recommendations unless required to do so by the convening authority.

12 (8) Each court of inquiry shall keep a record of its proceedings, which shall be
 13 authenticated by the signatures of the president and counsel for the court and
 14 forwarded to the convening authority. ~~If~~ ~~In case~~ the record cannot be authenticated
 15 by the president it shall be signed by a member in lieu of the president. ~~If~~ ~~and in~~
 16 ~~ease~~ the record cannot be authenticated by the counsel for the court it shall be
 17 signed by a member in lieu of the counsel.

18 ➔Section 140. KRS 35.380 is repealed, reenacted as a new section of KRS
 19 Chapter 35, and amended to read as follows:

20 (1) The following persons may ~~officers of the National Guard and active militia shall~~
 21 ~~have power to~~ administer oaths for the purposes of military administration,
 22 including military justice, ~~and affidavits may be taken for such purposes before~~
 23 ~~such officers~~:

24 (a) All judge advocates ~~of the National Guard and active militia~~;

25 (b) ~~All summary courts-martial~~;

26 (e) ~~—~~ All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

27 ~~(c)~~ ~~(d)~~ All commanding officers of the naval militia ~~staff judge advocates and~~

1 acting or assistant staff judge advocates]; and

2 ~~(d)~~~~(e)~~ All other persons designated by regulations of the Armed Forces of the
3 United States or by statute~~[issued pursuant to this chapter].~~

4 (2) The following persons may~~[officers of the National Guard or active militia shall~~
5 ~~have power to]~~ administer oaths necessary in the performance of their duties~~], and~~
6 ~~affidavits may be taken for such purposes before such officers]:~~

7 (a) The president, military judge, and trial counsel~~], and assistant trial counsel]~~
8 for all general and special courts-martial;

9 (b) The president and the counsel for the court of any court of inquiry;

10 (c) All officers designated to take a deposition;

11 (d) All persons detailed to conduct an investigation;

12 (e) All other persons designated by regulations of the Armed Forces of the
13 United States or by statute~~[issued pursuant to this chapter].~~

14 (3) The signature without seal of any such person~~[enumerated in subsections (1) and~~
15 ~~(2) of this section]~~, together with the title of his or her office, shall be prima facie
16 evidence of the person's~~[his]~~ authority.

17 ➔Section 141. KRS 35.385 is repealed, reenacted as a new section of KRS
18 Chapter 35, and amended to read as follows:

19 (1) (a) The sections of this code specified in paragraph (c) of this subsection~~[KRS~~
20 ~~35.015, 35.020, 35.035 to 35.070, 35.120, 35.130, 35.155, 35.185, 35.190,~~
21 ~~35.275, 35.385, 35.390, 35.395, 35.440 to 35.680]~~ shall be carefully explained
22 to each enlisted member~~[every enlisted person]~~ at the time of, or within thirty
23 (30) days after the member's initial entrance into a duty status with the state
24 military forces.

25 (b) The sections~~[his enlistment or induction into or when ordered to duty in or~~
26 ~~with any of the forces of the National Guard or active militia or within six (6)~~
27 ~~days thereafter. They]~~ shall be explained again:

1 1. After the member has completed basic or recruit training;~~[he has~~
2 completed six (6) months service,] and

3 2. Again at the time when the member~~[he]~~ reenlists.

4 (c) This subsection applies with respect to Sections 7, 8, 12 to 19, 26, 28, 32, 38,
5 39, 57, 81 to 138, and 141 to 143 of this Act.

6 (2) The~~[A complete]~~ text of this code and of the regulations prescribed under such
7 code shall~~[by the Governor thereunder shall, upon request,]~~ be made available to
8 any member of the state military forces, upon request by the member, for the
9 member's~~[National Guard or active militia for his]~~ personal examination.

10 ➔Section 142. KRS 35.390 is repealed, reenacted as a new section of KRS
11 Chapter 35, and amended to read as follows:

12 Any member of the state military forces~~[National Guard or active militia]~~ who believes
13 himself or herself wronged by his or her commanding officer, and, upon due application
14 to that~~[such]~~ commander, is refused redress, may complain to any superior
15 commissioned officer who shall forward the complaint to the officer exercising general
16 court-martial jurisdiction over the officer against whom it is made. The officer
17 exercising general court-martial jurisdiction shall examine into the complaint and take
18 proper measures for redressing the wrong complained of, and shall, as soon as
19 possible, send to~~[Governor through]~~ the adjutant general a true statement of that
20 complaint, with the proceedings thereon~~]; the Governor, after investigation, shall take~~
21 ~~such measures as he deems proper].~~

22 ➔Section 143. KRS 35.395 is repealed, reenacted as a new section of KRS
23 Chapter 35, and amended to read as follows:

24 (1) Whenever complaint is made to any commanding officer that willful damage has
25 been done to the property of any person or that the person's~~[his]~~ property has been
26 wrongfully taken by members of the state military forces, that person may,
27 under~~[National Guard or active militia he may, subject to]~~ such regulations~~[as may~~

1 be} prescribed~~[pursuant to this chapter]~~, convene a board to investigate the
 2 complaint. The board shall consist of from one (1) to three (3) commissioned
 3 officers and~~[shall have]~~, for the purpose of that~~[such]~~ investigation, it has power to
 4 summon witnesses and examine them upon oath~~[or affirmation]~~, to receive
 5 depositions or other documentary evidence, and to assess the damages sustained
 6 against the responsible parties. The assessment of damages made by the~~[such]~~
 7 board is~~[shall be]~~ subject to the approval of the commanding officer, and~~[,]~~ in the
 8 amount approved by that officer~~[him,]~~ shall be charged against the pay of the
 9 offenders. The order of such commanding officer directing charges herein
 10 authorized is~~[shall be]~~ conclusive on any disbursing officer for the payment~~[by~~
 11 ~~him]~~ to the injured parties of the damages so assessed and approved.

12 (2) ~~If~~~~[Where]~~ the offenders cannot be ascertained, but the organization or detachment
 13 to which they belong is known, charges totaling~~[the adjutant general may direct~~
 14 ~~that]~~ the amount of damages assessed and approved may be made in such
 15 proportion as may be considered just upon the individual members thereof who
 16 are shown to have been present at the scene at the time the damages complained
 17 of were inflicted, as determined by the approved findings of the board~~[be paid to~~
 18 ~~the injured parties from the military fund of the unit of the National Guard or active~~
 19 ~~militia to which such offenders belonged].~~

20 ➔Section 144. KRS 35.425 is repealed, reenacted as a new section of KRS
 21 Chapter 35, and amended to read as follows:

22 The Governor may~~[is authorized to]~~ delegate any authority vested in the Governor~~[him]~~
 23 under this code, and~~[to]~~ provide for the subdelegation of any such authority, except the
 24 power given the Governor by Section 24 of this Act.

25 ➔SECTION 145. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) The fees and authorized travel expenses of all witnesses, experts, victims, court

reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention and confinement, and all other necessary expenses of prosecution and the administration of military justice, not otherwise payable by any other source, shall be paid out of the military justice fund.

(2) For the foregoing purposes, there is created in the State Treasury a fund to be designated the military justice fund that shall be administered by the adjutant general, from which expenses of military justice shall be paid in the amounts and manner as prescribed by law. The legislature may appropriate and have deposited in the military justice fund such funds as it deems necessary to carry out the purposes of this code.

➔Section 146. KRS 35.410 is repealed, reenacted as a new section of KRS Chapter 35, and amended to read as follows:

(1) Fines imposed by~~[may be paid to]~~ a military court or through imposition of non-judicial punishment may be paid to the state and delivered to the court or imposing officer, or to a person executing their process. Fines may be collected by:

(a) Cash or money order;

(b) Retention of any pay or allowances due or to become due the person from any state or the United States; or

(c) Garnishment or levy, together with costs, on wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

(2) Any sum so received or retained shall be deposited in the military justice fund or to whomever the court so directs~~[to an officer executing its process. The amount of any such fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until the fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned into the military court which imposed the fine and shall~~

be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected under a sentence of a summary court martial. A fine or penalty imposed by a military court upon an officer or enlisted man shall be paid by the collecting officer, and within thirty (30) days after collection, to the Treasurer of the Commonwealth of Kentucky, and it shall form a part of and be credited to the military fund of such organization or detachment. The Treasurer of the Commonwealth of Kentucky shall thereupon report the amount thereof, designating the organization or detachment to which it belongs, to the adjutant general of the state].

➔SECTION 147. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

This code shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, 10 U.S.C. Chapter 47.

➔Section 148. KRS 35.415 is repealed, reenacted as a new section of KRS Chapter 35, and amended to read as follows:

All persons acting under the provisions of this code, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions which they did or failed to do as part of their duties under this code.[No

action or proceeding shall be prosecuted or maintained against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.]

➔SECTION 149. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

The provisions of this code are hereby declared to be severable and if any provision of this code or the application of such provision to any person or circumstance is declared

invalid for any reason, such declaration shall not affect the validity of the remaining portions of this code.

➔Section 150. KRS 35.430 is repealed, reenacted as a new section of KRS Chapter 35, and amended to read as follows:

This chapter~~[shall be known and]~~ may be cited~~[and referred to]~~ as the Kentucky Code of Military Justice.

➔SECTION 151. A NEW SECTION OF KRS CHAPTER 35 IS CREATED TO READ AS FOLLOWS:

Upon the effective date of this Act, this chapter supersedes all existing statutes, ordinances, directives, rules, regulations, orders, and other laws in the state covered by the subject matter of this chapter, and all such statutes, ordinances, directives, rules, regulations, orders, and other laws are hereby superseded.

➔Section 152. The following KRS sections are repealed:

35.025 Dismissal of commissioned officers.

35.040 Apprehension of deserters.

35.095 Jurisdiction of summary courts-martial.

35.115 Who may convene a summary court-martial.

35.135 Persons ineligible as staff judge advocate or legal officer to reviewing authority upon same case.

35.295 Record to be forwarded to reviewing authority.

35.305 Return of record for reconsideration or revision.

35.315 Approval of findings by convening authority.

35.330 Approval of finding on lesser included offense.

35.335 Counsel for accused before reviewing authority.

35.370 Direct communication between convening authorities, judge advocates and legal officers.

35.405 Process and mandates of military courts.

1 35.420 Jurisdiction of military courts presumed.

2 35.436 Application of substantive provisions to persons in duty status only.

3 35.485 Improper handling of military property.

4 35.565 Persons charged with certain crimes against the United States or the
5 Commonwealth to be turned over to civil authorities.

6 ➔SECTION 153. A NEW SECTION OF KRS CHAPTER 95A IS CREATED
7 TO READ AS FOLLOWS:

8 (1) The commission shall develop a policy for reviewing and accepting the training
9 and service of any member of the United States military who served as a
10 firefighter towards certification as a firefighter in the Commonwealth of
11 Kentucky.

12 (2) The commission shall promulgate administrative regulations in accordance with
13 KRS Chapter 13A as necessary to implement the provisions of this section.

14 ➔SECTION 154. A NEW SECTION OF KRS CHAPTER 311A IS CREATED
15 TO READ AS FOLLOWS:

16 (1) Any member of the United States military who is registered by the National
17 Registry of Emergency Medical Technicians as an Emergency Medical
18 Technician-Basic, Emergency Medical Technician-Intermediate, or Emergency
19 Medical Technician-Paramedic shall be eligible for direct reciprocity for initial
20 Kentucky certification as an emergency medical technician.

21 (2) The Kentucky Board of Emergency Medical Services shall promulgate
22 administrative regulations in accordance with KRS Chapter 13A as necessary to
23 implement the provisions of this section.

24 ➔Section 155. Any board or commission in the Commonwealth of Kentucky that
25 has at least one (1) member appointed by the Governor is highly encouraged to:

26 (1) Identify military occupational specialties that are the same as or similar to
27 occupations that the board or commission is responsible for the licensure or certification

1 of;

2 (2) Develop a process for reviewing the training and service of members of the
3 United States military whose occupational specialties have been identified as being
4 similar or the same as occupations that the board or commission is responsible for the
5 licensure and certification of; and

6 (3) When possible, accept relevant military training and service towards licensure
7 or certification in the occupation which the board or commission is responsible for.

8 ➔SECTION 156. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO
9 READ AS FOLLOWS:

10 *The Kentucky Long Rifle is named and designated the official gun of the*
11 *Commonwealth of Kentucky.*

12 ➔Section 157. The General Assembly hereby designates the Commonwealth of
13 Kentucky as a Purple Heart State in honor of the service and sacrifices of our nation's
14 men and women in uniform who are wounded or killed by the enemy while serving to
15 protect the freedoms enjoyed by all Americans.

16 ➔Section 158. KRS 56.820 is amended to read as follows:

17 (1) This section shall apply when the built-to-suit process involves the construction of a
18 building on state-owned land.

19 (2) Upon the execution of a lease awarded under this section, the Commonwealth shall
20 convey to the individual or firm to whom such lease has been awarded, in fee
21 simple with covenant of general warranty of title, the real estate upon which the
22 building is to be constructed under this lease. The lease shall provide for an initial
23 lease term commencing on the date the building is accepted for occupancy by the
24 Commonwealth, but not later than thirty (30) days after the owner's architect has
25 certified that construction of the building has been completed, and ending June 30
26 of the second year of the then current fiscal biennium of the Commonwealth, with
27 an option in the Commonwealth, as lessee, to extend the term of the lease for a term

of two (2) years from the expiration of the original term of the lease and for two (2) years from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years to be agreed upon by the parties at a rental which, if paid for the original term and for each of the full number of years for which the term of the lease may be extended, will amortize the total cost of the erection of the building and appurtenances. The rent shall be paid at such times as the parties to the lease agreed upon. The lease shall provide that the lessee may, at the expiration of the original or any extended term, purchase the leased premises at a stated price, which shall be the balance of the total cost of erection of the building and appurtenances not amortized by the payments of rent previously made by the lessee. The lease shall provide that in the event of the exercise of the option to purchase the leased premises or in the event the lease has been extended for the full number of years which it is agreed the same may be extended, and all rents and payments provided for in the lease have been made, the lessor shall convey the premises to the lessee in fee simple with covenant of general warranty of title. The lease may provide that the lessee shall, as additional rent for the leased premises, pay all taxes assessed against the leased premises, and the cost of insuring the building erected thereon against loss or damage by fire and windstorm in such sum as may be agreed by the parties thereto.

(3) For buildings located in Fayette County, the commissioner of the Department for Facilities Management on behalf of the Department for Military Affairs may award a built-to-suit lease for built-to-suit projects without the conveyance of title required in subsection (2) of this section. Any lease agreement under this subsection shall be awarded in accordance with the provisions of KRS Chapter 45A. The provisions of KRS 56.8163, 56.8165, 56.8167, 56.8169, 56.8171, and 56.8173 shall not apply to built-to-suit leases awarded under this subsection. Any lease agreement established under this subsection shall provide that title to all

improvements shall vest in the Commonwealth upon completion of the term of the lease.

➔ Section 159. KRS 132.195 is amended to read as follows:

(1) When any real or personal property which is exempt from taxation is leased or possession is otherwise transferred to a natural person, association, partnership, or corporation in connection with a business conducted for profit, the leasehold or other interest in the property shall be subject to state and local taxation at the rate applicable to real or personal property levied by each taxing jurisdiction.

(2) Subsection (1) of this section shall not apply to interests in:

(a) Industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority under the provisions of KRS Chapter 103, the taxation of which is provided for under the provisions of KRS 132.020 and 132.200;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(c) Property of any state-supported educational institution;

(d) Vending stand locations and facilities operated by blind persons under the auspices of the Office for the Blind, regardless of whether the property is owned by the federal, state, or a local government;~~{ or }~~

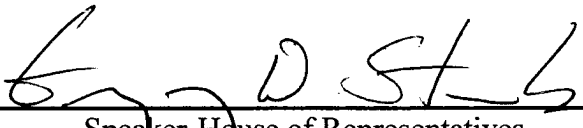
(e) Property of any free public library; or

(f) Property in Fayette County, Kentucky administered by the Department of Military Affairs, Bluegrass Station Division.

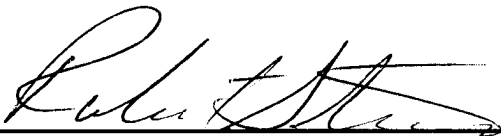
(3) Taxes shall be assessed to lessees of exempt real or personal property and collected in the same manner as taxes assessed to owners of other real or personal property, except that taxes due under this section shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, or urban-county government for which the taxes

1 were assessed and if unpaid shall be recoverable by the state as provided in KRS
2 Chapter 134.

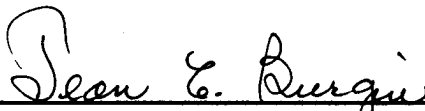
3 ➔Section 160. Whereas the Department for Military Affairs, Bluegrass Station
4 Division requires immediate authorization to begin work on construction of the buildings
5 in order for the buildings to be completed on time, an emergency is declared to exist, and
6 Sections 158 and 159 of this Act take effect upon their passage and approval by the
7 Governor or upon their otherwise becoming a law.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 3-19-13